

FILED  
U.S. DISTRICT COURT

2010 MAY 18 A 10:55

DISTRICT OF UTAH

DY: DEPUTY CLERK

RECEIVED

MAY 17 2011

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DIVISION

OFFICE OF  
JUDGE TENA CAMPBELL

---

UNITED STATES OF AMERICA,	:	1:03 CR 69 TC
	:	
Plaintiff,	:	
	:	
vs.	:	ORDER GRANTING LEAVE OF
	:	COURT TO FILE A DISMISSAL
	:	OF THE INDICTMENT
RIGOBERTO HARO-MARTINEZ,	:	
	:	
Defendant.	:	

---

Based upon the motion of the United States of America, and good cause appearing therefor, the Court hereby grants leave under Fed.R.Crim.P. 48(a) to allow the United States Attorney to file a dismissal of the Indictment as to Defendant Rigoberto Haro-Martinez in the above-captioned case.

DATED this 18<sup>th</sup> day of May, 2010.

*Tena Campbell*

---

TENA CAMPBELL  
Chief United States District Judge

CRAIG E. HILBORN  
HILBORN & HILBORN, P.C.  
999 Haynes Street, Suite 205  
Birmingham, MI 48009  
Telephone (248) 642-8350  
Facsimile (248) 642-3016  
*Attorneys for Plaintiff*

DENNIS J. CONROY (0712)  
SPENCER SIEBERS (8320)  
SILVESTER & CONROY, L.C.  
1371 East 2100 South, Suite 200  
Salt Lake City, Utah 84105  
Telephone: (801) 532-2266  
Facsimile: (801) 532-2270  
*Attorneys for Defendants ICON Health & Fitness, Inc. and  
Freemotion Fitness, Inc.*

FILED  
U.S. DISTRICT COURT  
2008 MAY 18 AM 10:54

CLERK OF COURT  
SALT LAKE CITY, UTAH  
BY: T. J. JENKINS

**RECEIVED**

**MAY 17 2010**

OFFICE OF U.S. DISTRICT JUDGE  
BRUCE S. JENKINS

---

**IN THE UNITED STATES DISTRICT COURT IN AND FOR  
THE DISTRICT OF UTAH, CENTRAL DIVISION**

---

JONATHON DIPERNA,

Plaintiff,

vs.

ICON HEALTH & FITNESS, INC., a Utah  
corporation, and FREEMOTION FITNESS,  
INC., a Utah corporation,

Defendants.

**STIPULATED AMENDED  
SCHEDULING ORDER ~~AND TRIAL~~  
~~SETTING~~**

Civil No. 1:07-CV-00136

Honorable Judge Bruce S. Jenkins

---

The parties to the above-captioned proceeding, pursuant to Federal Rules of Civil Procedure 16 and 26, submitted a Joint Stipulation and Motion for New Trial Date and Amended Scheduling Order. For good cause shown, the Court hereby ORDERS as follows:

**1. DISCOVERY**

- a. The Discovery cutoff dates are: Fact July 16, 2010 and Expert August 27, 2010.
- b. The parties shall exchange preliminary Witness Lists on or before June 1, 2010.

**2. EXPERT REPORTS**

- a. Reports from experts under Rule 26(a)(2) will be submitted on:  
  
Plaintiff(s) July 23, 2010  
  
Defendant(s) August 13, 2010

**3. DISPOSITIVE MOTIONS**

- a. The deadline for filing dispositive or potentially dispositive motions and Daubert motions is September 20, 2010.

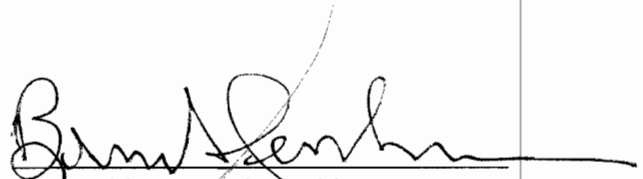
**4. PRETRIAL ORDER**

- a. A Proposed Joint Final Pretrial Order shall be submitted to the Judge's Chambers by November 17, 2010, with disputed evidentiary, factual, and other issues identified and rosters of witnesses and exhibits for respective cases in chief listed.

**5. FINAL PRETRIAL CONFERENCE**

- a. The Final Pretrial Conference shall be held on November 19, 2010 at 9:30 a.m. A trial date will be fixed at the Final Pretrial Conference.

DATED this 17 of May, 2010.

  
Honorable Bruce S. Jenkins  
DISTRICT COURT JUDGE

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

MAY 18 2010

D. MARK JONES, CLERK

DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

WILLIAM J. LAWRENCE

Plaintiff,

vs.

RECONTRUST COMPANY, N.A., et al.,

Defendants.

ORDER

Case No. 1:08 cv 66 DB

The plaintiff, William J. Lawrence, moves this court to set aside its April 9, 2010 order dismissing the case for failure to prosecute. Plaintiff's counsel has informed the court that he did not receive the March 17, 2010 Order to Show Cause and that the plaintiff has been pursuing his claims against the defendants. Therefore, the court, finding good cause showing, vacates and sets aside its April 9, 2010 order dismissing the above-captioned case.

IT IS SO ORDERED.

DATED this 18th day of May, 2010.



Dee Benson  
United States District Judge

DARIN B. GOFF (Bar No. 11355)  
**STIRBA & ASSOCIATES**  
215 South State Street, Suite 750  
P.O. Box 810  
Salt Lake City, UT 84110-0810  
Telephone: (801) 364-8300  
Fax: (801) 364-8355  
Email: [dgoff@stirba.com](mailto:dgoff@stirba.com)

*Attorneys for Defendant*

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

LEONEL BARRIGA,

Defendant.

**ORDER TO CONTINUE TRIAL**

Case No. 1:10CR00034

Judge Clark Waddoups

Based on the Motion to Continue Trial filed by the Defendant, Leonel Barriga, in the above entitle case, and good cause appearing; the court makes the following findings:

1. Defense counsel will require additional time to investigate the allegations in this matter and prepare a defense, including time required for translation and review of audio and video recordings made during the investigation.
2. Defendant, Leonel Barriga, is not in custody and agrees with the need for a continuance of the trial.

3. Special Assistant United States Attorney Michael Thorpe has been contacted by defense counsel and does not object to the continuance.

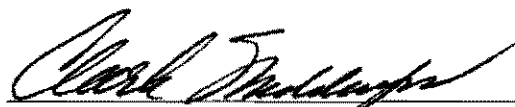
4. The ends of justice are best served by a continuance of the trial date, and the ends of justice outweigh the interests of the public and the defendant to a speedy trial. Although this matter, taken as a whole, is not unusual or complex, the failure to grant the continuance would deny counsel for Defendant the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

IT IS HEREBY ORDERED:

The 3-day jury trial previously scheduled to begin on June 7, 2010, is hereby continued to the 16<sup>th</sup> day of August, 2010 at 8:30 a.m./p.m. Pursuant to 18 U.S.C. § 3161(h) the Court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial. Accordingly, the time between the date of this order and the new trial date set forth above is excluded from speedy trial computation for good cause.

SO ORDERED this 17<sup>th</sup> day of May, 2010.

BY THE COURT



HONORABLE CLARK WADDOUPS  
District Court Judge

---

IN THE UNITED STATES DISTRICT COURT DISTRICT OF UTAH, NO. 1:10-CR-52 TS May 18, 2010 (1:26pm) DISTRICT OF UTAH	<b>FILED</b> CLERK, U.S. DISTRICT COURT
---	--

---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARCELINO MARTINEZ-GONZALEZ

Defendant.

: Case No. 1:10-CR-52 TS  
: ORDER SETTING DISPOSITION  
: DATE AND EXCLUDING TIME  
: FROM SPEEDY TRIAL  
: COMPUTATION  
:

---

This matter came before this Court on 5/19/10 for the purpose of an initial appearance and arraignment. The defendant, who was present, was represented by Spencer Rice . The United States was represented by Assistant United States Attorney Lynda Krause. This defendant has been charged with Illegal Reentry of a Previously Removed Alien in violation of 8 U.S.C. § 1326.

The United States Attorney's Office for the District of Utah has indicated that this defendant meets the eligibility requirements for the "fast-track" benefit, namely, an additional reduction in his or her sentence. However, in order to derive the benefit of this reduction, the defendant must agree to certain conditions as set forth in the fast-track program.

This defendant did not, and is not required at this hearing, to enter a plea of guilty, nor is he/she required at this hearing to commit to enter a plea of guilty. However, the defendant, through counsel, has indicated that he/she wishes to preserve his/her opportunity to participate in the program, and has consented, in writing, to the initiation and disclosure to the Court and the parties of a pre-plea disposition report.

The defendant has requested that this Court set this matter for a status/change of plea hearing date approximately 55 days from the date of this initial appearance and arraignment. Counsel for the defendant has indicated that such will afford counsel the time necessary to meaningfully explain to the defendant the details of the fast-track program and its potential application to this case. Additionally, this time will provide the defendant an adequate opportunity to make an informed decision whether to participate in the program. Therefore, based upon the reasons set forth above, this Court ORDERS that this matter be scheduled for **7/15/10 at 2:30 pm** before **Judge Stewart**.

This Court finds, pursuant to 18 U.S.C. § 3161(h)(1)(I), that this period of delay is a result of the necessary consideration by the Court and parties of this proposed plea agreement. Additionally, this Court finds, pursuant to 18 U.S.C. § 3161(h)(8)(A), that the ends of justice outweigh the best interest of the public and defendant in a speedy trial and that, pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv), that the failure to grant such a continuance would deny counsel



for the defendant and the defendant the reasonable time necessary for effective preparation and for discussion and deliberation of the proposed plea agreement, taking into account the exercise of due diligence, and would therefore result in a miscarriage of justice. Based on the foregoing, IT IS HEREBY ORDERED that, pursuant to 18 U.S.C. § 3161(h), all time between **5/19/10** (the date of this appearance), and **7/15/10** (the date of the scheduled status hearing) is excluded from computing the time within which the trial of this matter must commence.

DATED this 19th day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Samuel Alba', is written above a horizontal line.

Samuel Alba  
United States Magistrate Judge

JOSEPH C. RUST (2835)  
SCOTT S. BRIDGE (12039)  
ADAM L. GRUNDTVIG (12106)  
KESLER & RUST  
68 South Main Street, Second Floor  
Salt Lake City, Utah 84101  
Telephone: (801) 532-8000  
*Attorneys for Plaintiff*  
Email: [jcrust@keslerust.com](mailto:jcrust@keslerust.com)  
[sbridge@keslerrust.com](mailto:sbridge@keslerrust.com)  
[agrundvig@keslerrust.com](mailto:agrundvig@keslerrust.com)

RECEIVED CLERK  
MAY 11 2010  
U.S. DISTRICT COURT

FILED  
U.S. DISTRICT COURT  
2010 MAY 13 A 9:34  
CLERK  
FBI

---

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT UTAH  
NORTHERN DIVISION**

---

AL-DIWAN UNITED FOR GENERAL  
TRADING & CONTRACTING CO.,

v.

MARWAN AHALAT, an individual,

**DEFAULT JUDGMENT**

Civil No. 1:10-cv-00051CW  
Judge Clark Waddoups

---

The complaint of plaintiff Al-diwan United for General Trading & Contracting Co. for permanent injunction in accordance with Fed. R. Civ. P. Rule 65 and damages having been filed with the court, and defendant Marwan Ahalat having been served with the same as well as with the temporary restraining order dated April 22, 2010 and the order for preliminary injunction dated May 4, 2010, and plaintiff having posted the required \$1,000 bond relative to the order for preliminary

injunction, and defendant having failed to appear at court either in person or through legal counsel at any of the hearings relative to said orders, and defendant having failed to appear and answer plaintiff's complaint filed herein, the legal time for answering having expired, and the default of defendant Marwan Ahalat having been duly entered according to law,

**WHEREFORE**, by virtue of the law, and by reason of the premises aforesaid, it is **ORDERED**, **ADJUDGED AND DECREED** that:

1. Defendant Marwan Ahalat be and he is hereby permanently restrained and enjoined from making any attempts, without leave of this court, from communicating in any way with the ICC arbitration panel in Kuwait concerning plaintiff Al-Diwan and otherwise from submitting any further defamatory materials concerning Al-Diwan and/or its employees to anyone with the likelihood of those materials being submitted to the ICC arbitration panel in Kuwait handling the pending arbitration matter between Al-Diwan and Fluor/Morganti.

2. Because the injunction is now permanent, plaintiff's bond in the amount of \$1,000 is hereby released and the clerk of the court is directed to repay the same to plaintiff by paying that sum to plaintiff's law firm, Kesler & Rust.

3. The award of damages as prayed for in the complaint will be found and entered after an evidentiary hearing relative to the same.

DATED this 17<sup>th</sup> day of May, 2010.

BY THE COURT:

  
UNITED STATES DISTRICT COURT JUDGE

# United States District Court

Northern Division for the District of Utah

FILED  
U.S. DISTRICT COURT  
2010 MAY 18 PM 2:41

## ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

Karen Kay Fox

v.

Michael Astrue

Case Number: 1:10-cv-54 TS

Having considered the application to proceed without prepayment of fees under 28 U.S.C. 1915;

IT IS ORDERED that the application is:



GRANTED.



DENIED, for the following reasons:

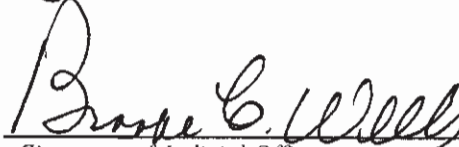
ENTER this

13<sup>th</sup>

day of

May

, 20 10



Signature of Judicial Officer

Brooke C. Wells, U.S. Magistrate Judge

Name and Title of Judicial Officer

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

MAY 17 2010

D. MARK JONES, CLERK  
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE LEROY DOCKSTADER,

Defendant.

CASE NO: 2:01-cr-00409-RTB

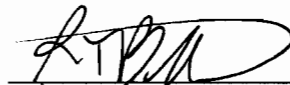
WRIT OF HABEAS CORPUS AD  
PROSEQUENDUM

TO: THE UNITED STATES MARSHAL FOR THE DISTRICT OF UTAH OR TO  
ANY OTHER OFFICER IN WHOSE CUSTODY THE DEFENDANT MAY BE  
HELD:

The Court orders that you bring defendant, GEORGE LEROY DOCKSTADER, now being confined in the Washington County Correctional Facility under the authority of the State of Utah, to the United States District Court for the District of Utah before the Honorable Magistrate Judge Robert T. Braithwaite, on May 24th, 2010, at 1:00 p.m., for an appearance upon a charge pending in the above-entitled case and for final disposition at a later date. The Court further orders that you hold defendant in your custody and, that immediately after the conclusion of the proceedings and final disposition of the above-entitled case in the United States District Court, return

defendant to the institution where defendant was confined and then make a return upon this Writ.

DATED this 17 day of May, 2010.

A handwritten signature in black ink, appearing to read 'R. T. Braithwaite', written over a horizontal line.

ROBERT T. BRAITHWAITE  
United States Magistrate Judge

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

200 MAY 18 P 2:19

DISTRICT OF UTAH

DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EFREN GURROLA,

Defendant.

ORDER

Case No. 2:04 CR 769 TC

Defendant Efren Gurrola, through counsel, has filed a motion to release sealed record from file (Dkt. 268). The court DENIES the motion without prejudice. The defendant has failed to show sufficient reason for the release of the sealed document.

DATED this 18th day of May, 2010.

BY THE COURT:

*Tena Campbell*

TENA CAMPBELL  
Chief Judge



CARLIE CHRISTENSEN, Acting United States Attorney (#633)  
JEANNETTE F. SWENT, Assistant United States Attorney (#6043)  
Attorneys for the United States of America  
185 South State Street, Suite 300  
Salt Lake City, Utah 84111-1506  
Telephone (801) 524-5682

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

MAY 18 2010  
BY D. MARK JONES, CLERK  
DEPUTY CLERK

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	ORDER TO PROVIDE ADDITIONAL
	)	FINANCIAL INFORMATION
vs.	)	
	)	Case No. 2:04MC00233-001
CRAIG A. BLAMIREs, D.C.,	)	
	)	Judge Dee Benson
Defendant,	)	

---

The Court held a status conference in this matter on May 13, 2010. Plaintiff United States of America was represented by Assistant U.S. Attorney Jeannette F. Swent; Defendant Craig A. Blamires, D.C., appeared *pro se*. After lengthy discussion, the Court determined that the United States requires further information from Dr. Blamires to assess his ability to pay the judgment in this case. To that end,

IT IS HEREBY ORDERED that:

- by 5 p.m. on Monday, May 17, 2010, the United States shall provide to Dr. Blamires a specific, written list of documents and information for him to provide regarding his financial status;
- by 12 noon on Wednesday, May 26, 2010, Dr. Blamires shall

provide the documents and information requested by the United States to the U.S. Attorney's Office;

- If Dr. Blamires provides the requested documents and information, the parties shall make a good-faith effort to reach an agreement, enforceable by this Court, for Dr. Blamires to make monthly payments toward the judgment; and
- If Dr. Blamires does not fully comply with the United States' request for further financial information pursuant to this Order, the United States may renew its request for this Court to hold Dr. Blamires in contempt and impose sanctions, including incarceration.

IT IS FURTHER ORDERED that the Court finds no basis for Dr. Blamires' contention that counsel for the United States has displayed personal bias against him.

DATED this 18<sup>th</sup> day of May, 2010.

BY THE COURT:

A handwritten signature in black ink that reads "Dee Benson". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Honorable Dee Benson  
United States District Court

# UNITED STATES DISTRICT COURT

District of Utah

UNITED STATES OF AMERICA  
v.  
RICHARD KENNETH JEFFERY

**Judgment in a Criminal Case**  
(For Revocation of Probation or Supervised Release)

Case No. DUTX205CR000846-001-TS

USM No. 13102-081

Jamie Zenger

Defendant's Attorney

## THE DEFENDANT:

- ☒ admitted guilty to violation of condition(s) 3 and 4 of the Petition of the term of supervision.  
☐ was found in violation of condition(s) \_\_\_\_\_ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
4	Defendant failed to notify his probation officer 10 days prior to a change in residence	
5	Defendant committed another crime, to wit: Possessed a Controlled Substance (Heroin) - 3rd Degree Felony	02/19/2009

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☒ The defendant has not violated condition(s) 1-3 of Petition and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Last Four Digits of Defendant's Soc. Sec. No.: 1688

Defendant's Year of Birth: 1972

City and State of Defendant's Residence:  
Salt Lake City, UT

05/17/2010

Date of Imposition of Judgment

Signature of Judge

The Honorable Ted Stewart

U. S. District Judge

Name and Title of Judge

05/17/2010

Date

DEFENDANT: RICHARD KENNETH JEFFERY  
CASE NUMBER: DUTX205CR000846-001-TS

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

8 months (4 months to run concurrent to his state sentence)

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_  
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on \_\_\_\_\_  
☐ as notified by the United States Marshal.  
☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_ with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: RICHARD KENNETH JEFFERY  
CASE NUMBER: DUTX205CR000846-001-TS

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
**36 months**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: RICHARD KENNETH JEFFERY  
CASE NUMBER: DUTX205CR000846-001-TS

**SPECIAL CONDITIONS OF SUPERVISION**

All previously imposed terms and conditions are reinstated.

DEFENDANT: RICHARD KENNETH JEFFERY  
CASE NUMBER: DUTX205CR000846-001-TS

**ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES**

The \$115 urinalysis fee, and the \$100 Special Assessment imposed for the original offense are reinstated.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

---

**K-TEC, Inc.**, a Utah corporation,

Plaintiff,

vs.

**Vita-Mix Corp.**, an Ohio corporation,

Defendant.

---

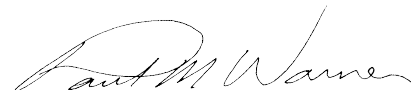
**ORDER**

Civil Action No. 2:06-CV-00108

Having reviewed the parties' Stipulated Motion for Extension of Time for Vita-Mix to Respond to K-TEC's Motion *in Limine* to Exclude Testimony of Robert Ulanski and Belatedly Produced Documents, Supporting Memorandum, and Exhibits A-N, and finding good cause in support thereof, the Court hereby GRANTS the Motion. The deadline shall be extended from May 18, 2010, until May 21, 2010, by noon MT.

IT IS SO ORDERED.

Dated this 18th day of May, 2010.



---

PAUL M. WARNER  
United States Magistrate Judge



United States District Court  
for the District of Utah

**Request and Order to Amend Previous Petition**

Name of Offender: **Michael L. Davidson**  
**aka Michael L. Peterson**

Docket Number: **2:07-CR-00350-001-TC**

**RECEIVED**

Name of Sentencing Judicial Officer: **Honorable Tena Campbell**  
**Chief U.S. District Judge**

**MAY 18 2010**

**OFFICE OF  
JUDGE TENA CAMPBELL**

Date of Original Sentence: **September 27, 2007**

Original Offense: **Escape**

Original Sentence: **33 Months BOP Custody/36 Months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision Began: **February 4, 2010**

**PETITIONING THE COURT**

☒ To amend the petition signed on April 12, 2010, as follows:

**CAUSE**

*Allegations on April 12, 2010 petition:*

**Allegation No. 1:** The defendant failed to notify his probation officer ten days prior to a change in residence. The defendant moved from his former residence on or about March 31, 2010, and as of April 12, 2010, he has failed to provide the United States Probation Office with a valid address.

Evidence in support of this allegation includes a verbal report from the owner of the house with whom the defendant was residing. She confirmed that the defendant has not stayed at this residence for several weeks, and he has possibly left the state.

**Allegation No. 2:** On April 7, 2010, the defendant failed to submit to drug testing, as directed by the United States Probation Office.

Evidence in support of this allegation includes notification from Occupational Health Care that the defendant failed to submit to a scheduled drug test.

**Allegation No. 3:** On April 6, 2010, the defendant failed to report in person and submit a written report, as directed by the United States Probation Office.

Evidence in support of this allegation includes the defendant failing to report in person as previously scheduled.

**Allegation No. 4:** On March 15, 2010, the defendant failed to attend substance-abuse treatment, as directed by the United States Probation Office.

Evidence in support of this allegation includes a broken/cancelled appointment notification from the Family Counseling Center.

*Additional allegations:*

**Allegation No. 5:** On May 3, 2010, the defendant committed another federal, state, or local crime, to wit: Fleeing from law enforcement on foot, a misdemeanor offense.

Evidence in support of this allegation includes a report from the Metro Gang Unit that reflects the defendant allegedly ran from police officers and jumped a fence in an attempt to avoid being arrested on the federal warrant. The defendant was captured a short time later. New criminal charges are pending in the Salt Lake City Court.

I declare under penalty of perjury that the foregoing is true and correct.

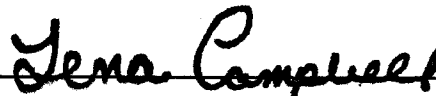


Jerry Hawk  
U.S. Probation Officer  
Date: May 5, 2010

---

**THE COURT ORDERS:**

- ☒ That the original petition be amended  
to include all allegations outlined  
☐ No action  
☐ Other



Honorable Tena Campbell  
Chief U.S. District Judge

Date:

5-18-2010

United States District Court  
for the District of Utah

**Request and Order for Modifying Conditions of Supervision  
With Consent of the Offender**  
(Waiver of hearing attached)

Name of Offender: **Shawn Marlin Makin**

Docket Number: **2:07-CR-00585-001-CW**

Name of Sentencing Judicial Officer: **Honorable Clark Waddoups**  
**U.S. District Judge**

Date of Original Sentence: **September 23, 2009**

Original Offense: **Possession of Child Pornography**

Original Sentence: **Credit for Time Served/120 Months Supervised Release**

Type of Supervision: **Supervised Release** Supervision Began: **September 23, 2009**

**PETITIONING THE COURT**

[X] To modify the conditions of supervision as follows:

The defendant shall participate in the United States Probation and Pretrial Services Office Computer and Internet Monitoring Program under a co-payment plan, and will comply with the provisions outlined in:

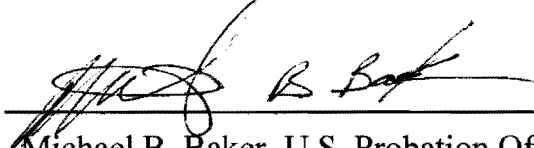
- ☒ 1. Appendix A, Limited Internet Access  
(Computer and Internet use, as approved)
- ☐ 2. Appendix B, Restricted Internet Access  
(Computer access only, as approved)
- ☐ 3. Appendix C, Restricted Computer Access  
(No computer or Internet access except for approved employment)

Furthermore, all computers, Internet-accessible devices, media-storage devices, and digital media accessible to the defendant are subject to manual inspection/search, configuration, and the installation of monitoring software and/or hardware.

**CAUSE**

The defendant has successfully complied with the special conditions imposed by the Court for the past eight months. He has completed sex-offender specific counseling and has had no known violations. The defendant was sentenced by the Court prior to the new inclusive and comprehensive current Internet conditions existing. He would like to be able to use the Internet and access appropriate approved Internet sites.

I declare under penalty of perjury that the foregoing is true and correct



Michael B. Baker, U.S. Probation Officer  
Date: May 7, 2010

---

**THE COURT ORDERS:**

- ☒ The modification of conditions as noted above  
☐ No action  
☐ Other



Honorable Clark Waddoups  
U.S. District Judge

Date: 5/17/2010

Attachment

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
PROBATION AND PRETRIAL SERVICES OFFICE****WAIVER OF RIGHT TO HEARING PRIOR TO  
MODIFICATION OF CONDITIONS OF SUPERVISION**

I have been advised by U.S. Probation Officer Michael B. Baker that he/she has submitted a petition and report to the Court recommending that the Court modify the conditions of my supervision in Case No.2:07-CR-00585-001-CW. The modification would be:

The defendant shall participate in the United States Probation and Pretrial Services Office Computer and Internet Monitoring Program under a co-payment plan, and will comply with the provisions outlined in:

- ☒ 1. Appendix A, Limited Internet Access  
(Computer and Internet use, as approved)
- ☐ 2. Appendix B, Restricted Internet Access  
(Computer access only, as approved)
- ☐ 3. Appendix C, Restricted Computer Access  
(No computer or Internet access except for approved employment)

Furthermore, all computers, Internet-accessible devices, media-storage devices, and digital media accessible to the defendant are subject to manual inspection/search, configuration, and the installation of monitoring software and/or hardware.

I understand that should the Court so modify my conditions of supervision, I will be required to abide by the new condition(s) as well as all conditions previously imposed. I also understand the Court may issue a warrant and revoke supervision for a violation of the new condition(s) as well as those conditions previously imposed by the Court. I understand I have a right to a hearing on the petition and to prior notice of the date and time of the hearing. I understand that I have a right to the assistance of counsel at that hearing.

Understanding all of the above, I hereby waive the right to a hearing on the probation officer's petition, and to prior notice of such hearing. I have read or had read to me the above, and I fully understand it. I give full consent to the Court considering and acting upon the probation officer's petition to modify the conditions of my supervision without a hearing. I hereby affirmatively state that I do not request a hearing on said petition.

  
\_\_\_\_\_  
Shawn Marlin Makin

5-7-10  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Witness:

Michael B. Baker  
U.S. Probation Officer

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

EDVIN C. REMUND, an individual,  
  
Plaintiff,

vs.

STATE FARM FIRE AND CASUALTY  
COMPANY, dba State Farm Insurance,  
a nation wide insurance company,  
  
Defendant.

**ORDER AND MEMORANDUM  
DECISION**

Case No. 2:07-cv-448-CW-PMW

---

Now before the court is Defendant State Farm Fire and Casualty Company's motion for summary judgment regarding Counts II and III. For the reasons stated below, State Farm's motion is GRANTED.

**BACKGROUND**

Plaintiff Edwin C. Remund owns property in Salt Lake City, Utah. The property includes a primary dwelling and a secondary "summer home" located on the rear section of the property built on concrete piers spanning Red Butte Creek. The previous owner of the property built retaining walls to control the flow of the creek below the summer home. In April 2005, Mr. Remund consulted with Vicki Tuua, an insurance agent, to obtain flood insurance for the property. Mr. Remund purchased a Standard Flood Insurance Policy (the "Policy") from State Farm, which State Farm issued as part of a federal program described below.

Mr. Remund asserts that before he purchased the Policy, Ms. Tuua advised him that the

Policy would be the most appropriate for him and warranted to him that the policy would cover any flood damage his property sustained, including any damage to the foundation of the summer home and retaining walls. Mr. Remund received a copy of the Policy and understood that the federal government was the underwriter of the policy. The language of the Policy excluded damage to retaining walls and any damage due to subsidence, even if the subsidence was due to a flood.

In June 2005, Mr. Remund noticed that rocks embedded in the retaining walls were displaced by the creek, leaving holes in the walls. One of the piers supporting the summer home had settled as well. Mr. Remund called State Farm to report a claim for damage to the retaining walls and summer home. On September 23, 2005, State Farm sent a representative to inspect the damage. State Farm sent Mr. Remund a letter on October 21, 2005, denying his claim. Mr. Remund sent letters in January and February 2006 explaining his disagreement with State Farm's denial. State Farm sent another representative to inspect Mr. Remund's property in the summer of 2006. Mr. Remund took steps to mitigate his damages and repair the retaining walls and structural supports to keep the summer home from collapsing.

When State Farm again refused to pay his claims, Mr. Remund filed suit in state court. In his complaint, he alleged causes of action for breach of contract, breach of warranty, equitable and promissory estoppel, and bad faith. State Farm removed to this court in 2007. During the course of motion practice, Mr. Remund voluntarily dismissed all claims except for breach of warranty (Count II) and estoppel (Count III), both under Utah state law. In those claims, Mr. Remund asserts State Farm is bound to cover his claims by Ms. Tuua's representation that the Policy would cover all damages.

State Farm has moved for summary judgment on Counts II and III on two main grounds. First, State Farm contends that Mr. Remund's state law claims are federally preempted. Next, State Farm contends that even if the state law claims are not preempted, they fail on the merits for various reasons. Mr. Remund argues that his claims are not preempted. Mr. Remund further asserts that his state law claims should go forward on the merits. For the reasons discussed below, State Farm's motion is GRANTED.

## **ANALYSIS**

### **I. Standard for Summary Judgment**

A court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56 (c). *See also Adler v. Wal-mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998). Courts analyze the facts and reasonable inferences in a light most favorable to the nonmoving party. *Applied Genetics Int'l, Inc. v. First Affiliated Sec., Inc.*, 912 F.2d 1238, 1241 (10th Cir. 1990). A genuine issue of material fact is created by factual evidence impacting the outcome of a lawsuit on which a rational jury could find in favor of the nonmoving party. *Chasteen v. UNISIA JECS Corp.*, 216 F.3d 1212, 1216 (10th Cir. 2000). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

### **II. Mr. Remund's Claims Are Preempted by Federal Law**

State Farm argues that Mr. Remund's remaining state law claims are federally preempted. Federal law preempts state law (1) when Congress has clearly expressed an intention to do so



(“express preemption”) (2) when Congress has clearly intended, by legislating comprehensively, to occupy an entire field of regulation (“field preemption”), and (3) when a state law conflicts with federal law (“conflict preemption”). *See Mount Olivet Cemetery Ass’n v. Salt Lake City*, 164 F.3d 480, 486 (10th Cir. 1998). Here, State Farm argues that the doctrines of express preemption and conflict preemption both bar Mr. Remund’s state law claims. Express preemption applies when a federal statute or regulation expressly preempts state law. *See Williams v. United Parcel Serv., Inc.*, 527 F.3d 1135, 1139 (10th Cir. 2008). Conflict preemption “occurs either when compliance with both the federal and state laws is a physical impossibility, or when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Mount Olivet*, 164 F.3d at 486 (citations omitted). When evaluating whether conflict preemption bars state law, the “purpose of Congress is the ultimate touchstone” and “we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.” *Deane v. United States*, 329 Fed. Appx. 809, 813 (10th Cir. 2009) (quoting *Wyeth v. Levine*, --- U.S. ----, 129 S.Ct. 1187, 1194 (2009)). Courts should be especially cautious to find conflict preemption “when the alleged conflict is in an area traditionally occupied by the States.” *Ramsey Winch Inc. v. Henry*, 555 F.3d 1199, 1204 (10th Cir. 2009) (citation omitted).

Here, State Farm argues that Mr. Remund’s state law causes of action are expressly preempted by the National Flood Insurance Act of 1968 and its implementing regulations, and that the causes of action are also preempted under a conflict preemption analysis. Mr. Remund, of course, disagrees. To give a simplified overview of relevant statutory scheme, the Act gives the Federal Emergency Management Agency the power to administer a nationwide federal flood

insurance program. *See Moffett v. Computer Sciences Corp.*, 457 F. Supp. 2d 571, 573 (D. Md. 2006). As part of that program, private insurance companies, called “WYO Carriers,” issue policies in their own names. *Id.* at 573-74. FEMA sets the terms of the Policy, which are set out in the regulations, and the WYO Carriers may not alter those terms. *See id.* While the WYO Carriers market and administer the policies, including handling claims, the federal government pays for claim and claim defense. *See id.* The Policy expressly states that federal law governs the policy and any claims related to claims handling. *See* 44 C.F.R. pt. 61 app.A(1), art. IX.

Mr. Remund characterizes his state law claims as related to policy procurement, meaning that they arose from conduct during the period before State Farm issued him the Policy. Controversy has arisen among federal courts as to whether state law claims relating to policy procurement against WYO Carriers are preempted by the Act. To wit, some cases hold that the Act preempts such claims, while others hold the opposite. Most of the cases directly addressing this issue are at the federal district court level: at this time there is only one federal circuit court that has squarely addressed the question. A thorough review of the cases on this question reveals why there is a split: the question quite complex and open to opposite conclusions that are both defensible.

Representative of the district court cases concluding that state law procurement claims are not preempted by federal law is *Reeder v. Nationwide Mutual Fire ins. Co.*, 419 F. Supp. 2d 750 (D. Md. 2006). In *Reeder*, the court conducted an exhaustive analysis of the Act, its implementing regulations, and the case law and reached the conclusion that “state tort law claims for negligence, negligent misrepresentation, fraud and deceit are not preempted by federal flood insurance law.” 419 F. Supp. 2d at 763 (footnote omitted). Typical of the district court cases

holding that state law procurement claims are preempted is *Moffett*, another case from the same federal district as *Reeder*. In *Moffett*, the court undertook an equally detailed consideration of the statute, the regulations, and prior precedent and held that a state law fraud claim related to procurement is federally preempted by conflict preemption. See *Moffett*, 457 F. Supp. 2d at 588. The court views *Reeder* and *Moffett* as particularly strong examples of the merits of each position.

Last year, in *Campo v. Allstate Ins. Co.*, 562 F.3d 751 (5th Cir. 2009), the Fifth Circuit became the first federal appellate court to address directly the issue of whether preemption bars state law procurement claims. In *Campo*, the court ruled that such claims are not preempted by federal law. Initially, the *Campo* court rejected the proposition that procurement claims are barred by express preemption. See *id.* at 757-758. The court also concluded that conflict preemption did not apply, on two main grounds. First, the court cited the doctrine of “*inclusio unius est exclusio alterius*.” *Id.* at 757. The court reasoned that “FEMA has expertise in drafting regulations that explicitly preempt state law, and yet in this instance it chose to confine the plain language of its preemption to handling.” *Id.* at 758. Second, the court concluded that “permitting prosecution of procurement-related state-law tort suits does not impede the full purposes and objectives of Congress.” *Id.*

Importantly, FEMA has publicly announced its disagreement with the decision in *Campo*. In a July 16, 2009 memorandum to WYO Carriers, Edward L. Connor, FEMA’s Acting Federal Insurance Administrator for the National Flood Insurance Program, opined that in *Campo*, the Fifth Circuit “significantly revised the scope of Federal preemption of . . . state law tort remedies by the National Flood Insurance Act and its implementing regulations.” (See FEMA Memo.,

attached as Ex. 1 to Dkt. No. 56.) The memorandum continues that “FEMA previously understood and intended its regulations to preempt state law claims related to policy formation, renewal, and administration arising from allegations of WYO company error as distinct from agent error. . . ” (*Id.*) The memorandum concluded that “preemption should apply to the nationally uniform and FEMA-mandated processes governing policy issuance and the administration of existing flood policies, including but not limited to rating, renewal, transfer, non-renewal, cancellation, or reformation.” (*Id.*)

As discussed below, the court agrees with State Farm that Mr. Remund’s claims are barred by both express preemption and conflict preemption.

#### **A. Express Preemption**

No case cited by the parties has ruled that state law procurement claims are expressly preempted. State Farm nonetheless urges the court to break new ground and hold that the Act and its regulations do expressly preempt such claims. State Farm contends that various statements by Congress and FEMA support a conclusion that state law procurement claims are expressly preempted.

First, State Farm argues that before 2000, the Policy stated, without limitation, that “this policy” is governed by federal law. According to State Farm, this broad statement was meant to include procurement claims, and the addition of “claims handling” to the Policy’s choice of law provision was meant to clarify, not limit the scope of preemption. The court does not find this argument persuasive. The phrase “this policy” seems most naturally read to cover claims by insureds relating to a policy after a policy has been issued. That phrase does not clearly refer to procurement claims.

State Farm's second argument is based on a regulation found at 44 C.F.R. 61.5(e), and has more merit. That regulatory provision states that:

The standard flood insurance policy is authorized only under the terms and conditions established by Federal statute, the program's regulations, the Administrator's interpretations and the express terms of the policy itself. Accordingly, representations regarding the extent and scope of coverage which are not consistent with the National Flood Insurance Act of 1968, as amended, or the Program's regulations, are void, and the duly licensed property or casualty agent acts for the insured and does not act as agent for the Federal Government, the Federal Emergency Management Agency, or the servicing agent.

44 C.F.R. 61.5(e). State Farm argues that through this regulation, FEMA intended to cut off liability for WYO Carriers for any agent misrepresentations regarding the scope of coverage, including by preempting state law procurement claims against those carriers.

Mr. Remund responds that in *Spence v. Omaha Indem. Ins. Co.*, 996 F.2d 793, 796 (5th Cir. 1993), the court "decline[d] to accept a reading of [44 C.F.R. 61.5(e)] immunizing WYO companies from liability for the tortious conduct of their agents." The *Spence* court, however, gives no indication as to how it came to this conclusion, which is at odds with the provision. On its face, the regulation states that an agent's representations that are inconsistent with the scope of coverage provided by Policy are void.<sup>1</sup> Moreover, the regulation states that if an agent makes representations inconsistent with the scope of coverage provided by the Policy, the agent is deemed to be acting on behalf of the insured, not FEMA or the "servicing agent," which can only refer to the WYO Carrier. This regulation signals a clear intent to shield FEMA and WYO Carriers from liability for misrepresentations about the scope of coverage made by agents seeking

---

<sup>1</sup> In this case, Mr. Remund does not dispute that the coverage he now seeks in inconsistent with the scope of coverage provided.

to sell flood insurance. In addition, 42 U.S.C. § 4081(c) bolsters State Farm's argument on this point. Section 4081(c) mandates that FEMA must indemnify agents or brokers for errors and omissions on the part of FEMA and the WYO Carriers, but disallows FEMA from indemnifying agents and brokers for their own errors and omissions.

When considered together, 44 C.F.R. 65.1(c) and 42 U.S.C. § 4081(c) evidence an intent that WYO Carriers be shielded from liability for representations made by agents and brokers that are inconsistent with the Policy. Instead, these provisions express a policy that liability for such statements be placed squarely on the brokers and agents individually. These two provisions, then, convince the court that state law claims relating to procurement are expressly preempted.

#### **B. Conflict Preemption**

In the alternative, the court concludes that even were express preemption not to apply, Mr. Remund's state law claims would be precluded by conflict preemption. The court is convinced by the reasoning in *Moffett*, 457 F. Supp.2d at 583-89, and rejects the analysis in cases such as *Reeder* and *Campo*. The court accepts the *Moffett* court's rationale that federal funds may well be at stake when procurement fraud is alleged and that such allegations may impose on FEMA costs related to the defense of such claims. The court also notes that FEMA's memorandum of July 16, 2009, which rejected *Campo*, was also important to this decision. As a broad, non-exhaustive summary of the reasons the conflict preemption has occurred, the court agrees that federal money is at stake in state law procurement claims against WYO Carriers and further agrees that allowing such claims would interfere with a key purpose of the Act, which is to encourage lower cost flood insurance. The court has reached this conclusion cautiously, after

giving considerable weight to the states' traditional role in regulating insurance.<sup>2</sup>

### **III. Even if Not Preempted, Mr. Remund's State Law Claims Fail for Lack of Reasonable Reliance**

Were Mr. Remund's claims not preempted by federal law, he would nevertheless be required to prove each of the elements necessary to succeed against State Farm under Utah law. He fails to do so, giving the court an alternative basis upon which to grant summary judgment in favor of State Farm.

State Farm correctly points out that to succeed on either his breach of warranty claim or estoppel claim, Mr. Remund must prove that he acted in reasonable reliance on Ms. Tuua's representations about coverage. *See Groen v. Tri-O-Inc.*, 667 P.2d 598, 606 (Utah 1983) (reliance an element of breach of warranty claim) and *Youngblood v. Auto-Owners Ins. Co.*, 158 P.3d 1088 (Utah 2007) (reliance an element of estoppel claim). State Farm contends that because the terms of the Policy are established by federal regulation, Mr. Remund was at least on constructive notice of the terms of the policy, citing *Federal Crop Ins. Corp. v. Merrill*, 322 U.S. 380 (1947) and *Heckler v. Community Health Servs. of Crawford County, Inc.*, 467 U.S. 51 (1984). Such notice, State Farm argues, precludes Mr. Remund from proving that he reasonably relied upon the alleged misrepresentation as to coverage, which defeats both claims.

While *Merrill* and *Heckler* may be persuasive in an appropriate case, the court need not reach that issue here. Mr. Remund admits that he received and read the Policy, although he disputes that what he read alerted him to the fact that the Policy would not cover the type of loss he now claims. Mr. Remund had actual notice of the terms of the Policy. Under *Youngblood*, an

---

<sup>2</sup> It is worth noting that Mr. Remund did not bring any claims against Ms. Tuua, against whom his state law claims would not be federally preempted.

insured may prevail on a claim that the agent for the insurer misrepresented the scope of coverage under a policy if the insured reasonably relied upon the agents statement. Nevertheless, “insurance purchasers fail to make the effort to read and understand the content of their insurance policies at their peril. When the language is clear, direct, understandable to ordinary people, and complete, it will be more difficult to prove reasonable reliance on the contrary oral promise.” 158 P.3d at 1096. Under Utah case law “[a] party claiming an estoppel cannot rely on representations or acts if they are contrary to his knowledge of the truth or if he had the means by which with reasonable diligence he could ascertain the truth.” *Id.* at 1095, quoting *Perkins v. Great-West Life Assurance Co.*, 814 P.2d 1125, 1130 (Utah Ct. App. 1991). Such a claim cannot prevail where an insured had access to information, which if considered, would have alerted him to question whether the coverage was available. *See Youngblood*, 158 P.3d at 1095.

Because Mr. Remund admits that he received and read the Policy, the reasonableness of his reliance turns on whether the terms of the Policy provided clear notice that the loss for which Mr. Remand makes a claim would not be covered. State Farm argues Mr. Remund should have anticipated that the increased steam flow that damaged his property would not meet the Policy’s definition of “flood.” State Farm argues that coverage is provided only for erosion caused by “currents of water exceeding anticipated cyclical levels that inundate an insured’s land.” (State Farm Memo., Dkt. No. 17, at 18.) This argument fails for two reasons.

First, the definition of “flood” may or may not be broad enough to cover Mr. Remund’s claim. “Flood” has a two part definition, and the part cited by State Farm applies on its face only to the “[c]ollapse or subsidence of land along the shore of a lake or similar body of water.” 44 C.F.R. Pt 61, App.A(1) § II.A.2. It would be hard to credibly argue that Red Butte Creek is



similar to a lake. The part of the Policy that more reasonably appears to apply to Mr. Remund's situation defines "flood" as "[a] general and temporary condition of two or more acres of normally dry land area from. . . [u]nusual and rapid accumulation or runoff of surface waters from any source." 44 C.F.R. Pt 61, App.A(1) § II.A.1.b. State Farm's argument that Mr. Remund should have been on notice that the Policy's "flood" definition would preclude his claims does not prevail because it would have not have been unreasonable for Mr. Remund to assume that in some circumstances, excessive run off in Red Butte Creek might meet that definition.

Second, even if Mr. Remund should have realized that "flood" should be read as State Farm argues, there is no evidence that Mr. Remund should have anticipated that the run-off from the stream would not exceed "anticipated cyclical levels." If the court were to only look to State Farm's argument on the definition of "flood," it would not reach the conclusion that Mr. Remund's reliance was not reasonable.

As State Farm indirectly argues in its briefing, however, the Policy did place Mr. Remund on reasonable notice that his claims were excluded. The Policy contains the following exclusion: **"Property Not Covered** We do not cover any of the following: . . . 12. Fences, **retaining walls**, seawalls, bulkheads, wharves, **piers**, bridges and docks." 44 C.F.R. Pt. 61, App. A(1) § IV.12. (emphasis added). This language is not difficult to understand, even for those not familiar with insurance concepts. Yet it is clear that the structures for which Mr. Remund claims damages are "retaining walls" and "piers."

This conclusion holds true even though Mr. Remund called those structures by different names in his complaint. That is, Mr. Remund claimed losses relating to the foundation of the

summer cabin and to channeling walls. This renaming effort fails because it places form over function. First, Mr. Remund admits that the cabin “was built on concrete piers that support the cabin as it spans the creek.” (Remund Opp., Dkt. No. 50, at 2, ¶ 5.) In other words, the cabin’s foundation is a pier, which is excluded. Second, Mr. Remund also makes no credible argument why the “channeling walls” that he complains were damaged are not simply “retaining walls” by another name.

In the face of Mr. Remund’s admission that he received and read a copy of the Policy, Mr. Remund could not have reasonably relied upon any representation that the Policy would cover flood damage to the pier and retaining walls. Thus, as a matter of law, Mr. Remund cannot establish the necessary elements to prevail on his claims for breach of warranty or estoppel.

### **CONCLUSION**

For the reasons stated above, the court concludes that Mr. Remund’s state law claims under Counts II and II are preempted, and in the alternative that they fail on the merits. State Farm’s motion for summary judgment is **GRANTED**.

SO ORDERED this 18th day of May, 2010.

BY THE COURT:



---

Clark Waddoups  
United States District Judge

# UNITED STATES DISTRICT COURT

District of Utah

UNITED STATES OF AMERICA

v.

Tyson James

## JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX2:08-CR-00247-001 DAK

USM Number: 15370-081

Gilbert Athay

Defendant's Attorney

### THE DEFENDANT:

☒ pleaded guilty to count(s) 2 of the Indictment.

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC§924(c)(1)(a)(ii)	Brandishing a Firearm During and in Relation to a Crime	4/22/2008	2

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☒ Count(s) 1 and 3 ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/13/2010

Date of Imposition of Judgment

Signature of Judge

Dale A. Kimball

Name of Judge

U.S. District Judge

Title of Judge

Date

May 14, 2010

DEFENDANT: Tyson James  
CASE NUMBER: DUTX2:08-CR-00247-001 DAK

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

84 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court strongly recommends that the defendant be enrolled in and have the benefit of RDAP while incarcerated, preferably in FCI Phoenix, Arizona to facilitate family visitation.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Tyson James

CASE NUMBER: DUTX2:08-CR-00247-001 DAK

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Tyson James

CASE NUMBER: DUTX2:08-CR-00247-001 DAK

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless he is in compliance with any established payment schedule and obtains the approval of the United States Probation Office.
2. The defendant shall provide the U. S. Probation Office access to all requested financial information.
3. The defendant shall participate in a mental health treatment program under a copayment plan as directed by the U. S. Probation Office, take any mental health medications as prescribed, and not possess or consume alcohol, nor frequent businesses where alcohol is the primary item of order, during the course of treatment or medication.
4. The defendant will submit to drug/alcohol testing as directed by the U. S. Probation Office and pay a one-time \$115 fee to partially defray the costs of collection and testing.
5. The defendant shall participate in a substance-abuse evaluation and/or treatment under a co-payment plan as directed by the U. S. Probation Office. During the course of treatment, the defendant shall not consume alcohol nor frequent any establishment where alcohol is the primary item of order.
6. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the U. S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Tyson James

CASE NUMBER: DUTX2:08-CR-00247-001 DAK

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 100.00	\$ 0.00	\$ 2,801.00

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Transwest Credit Union	\$2,801.00	\$2,801.00	
P.O. Box 65218			
Salt Lake City, UT 84165			
Attention: Derek Davies			
Reference: Tyson James			

<b>TOTALS</b>	\$ <u>2,801.00</u>	\$ <u>2,801.00</u>
---------------	--------------------	--------------------

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Tyson James  
CASE NUMBER: DUTX2:08-CR-00247-001 DAK

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- The Special Assessment Fee of \$100 is due immediately. The restitution shall be paid according to a schedule established by the Bureau of Prisons Inmate Financial Responsibility Program while incarcerated and at a minimum rate of \$78 per month as directed by the U. S. Probation Office upon release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
- Smith and Wesson .40-caliber pistol, Serial Number RBA5742

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.



Pages 7 - 10

are the

Statement of Reasons,  
which will be docketed  
separately as a sealed  
document

FLORES LEGAL SERVICES, P.C.  
Attorneys Consultants and Counselors at law  
German T. Flores #7526  
David Shapiro #6438  
Randall L. Rowberry #11104  
246 N. Orem Blvd  
Orem, UT 84057  
Telephone: (801) 226-8811  
Facsimile: (801) 226-0578

*Attorneys for Defendant*

FILED  
U.S. DISTRICT COURT

200 MAY 13 P 1:47

FILED IN UNITED STATES DISTRICT  
BY COURT, DISTRICT OF UTAH

MAY 17 2010

BY D. MARK JONES, CLERK  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION  
350 South Main Street, Rm. 150 Salt Lake City, Utah 84101-2180

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

Jorge ZETINA-CISNEROS, )  
Defendant. )

Case #: 2:08-cr-00293-DB-2

DEFENDANT ZETINA-CISNEROS'  
STIPULATED MOTION FOR  
CONTINUANCE


COMES NOW defendant, Zetina-Cisneros, by and through undersigned counsel,  
pursuant to Rule 12 of the Federal Rules of Criminal Procedure, and hereby respectfully  
moves the Court for a continuance of the trial setting in this matter to the joint criminal  
trial docket on August, 2010. This matter is currently set on the May 24, 2010 8:30 a.m.

criminal docket. As grounds for this Motion, counsel submits the following

**SO ORDERED**

Memorandum in Support:

\*\* 3 day jury trial to be  
rescheduled to 9/13/10  
@ 8:30 a.m. \*\*

  
DEE BENSON  
United States District Judge

Date 5/18/10

MEMORANDUM IN SUPPORT:

1. Counsel for Defendant Zetina-Cisneros, German T. Flores and his associates, are newly hired counsel to this case, replacing defendant's former attorney, and need additional time to prepare for trial.
2. Mr. Flores has found that, upon meeting with Special Assistant U.S. Attorney Vernon K Stejskal in his office to discuss the case on April 29, 2010, Mr. Flores did not receive complete discovery in the case from former defense counsel and is missing several documents.
3. Upon being made aware of the missing materials, Mr. Stejskal promised that he'd send all the missing documents necessary to complete defense counsel's discovery.
4. Mr. Flores respectfully requests a continuance to allow time for Mr. Stejskal to assemble and send the documents and for Counsel for Defendant Zetina-Cisneros to properly examine them so that Counsel and defendant can be more fully prepared for trial.
5. Furthermore, as part of the April 29<sup>th</sup> 2010 meeting, Mr. Flores is working with Mr. Stejskal toward a resolution of the case, but needs more time to accomplish negotiations.
6. Mr. Flores believes that in order to allow for thorough preparation and to avoid a potential scheduling conflict occasioned by Mr. Flores' busy summer schedule in court and time scheduled to be out of the country/state over the next three months, it is requested that this matter be set over to the criminal docket anytime in or after the month of August 2010.
7. This motion is not made to harass this court, and it is in the interests of justice that it be granted in that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendants in a speedy trial pursuant to 18 U.S.C. § 3161(h)(8).
8. Assistant United States Attorney Vernon G. Stejskal and counsel for defendant Jorge Zetina-Cisneros, have indicated no objection to the granting of this motion.
9. Defendant Jorge Zetina-Cisneros, by and through German T. Flores, David Shapiro, and Randall L. Rowberry, has no objection.

WHEREFORE, the defendant, Zetina-Cisneros, by and through counsel, respectfully files this motion to continue the trial setting from its current setting of May 24, 2010 at 8:30 a.m., to the criminal docket any time during or after the month of August, 2010.

Respectfully submitted,

FLORES LEGAL SERVICES P.C.

By:  /s/ GERMAN T. FLORES

GERMAN T. FLORES, #7526

Canterbury Park

246 N. Orem Boulevard

Orem, UT 84606

Tel: (801) 226-8811

Fax: (801) 226-0578

FLORES LEGAL SERVICES, P.C.

ATTORNEYS FOR DEFENDANT ZETINA-CISNEROS

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Stipulated Motion to Continue and Proposed Order was mailed this 13 day of July, 2010 to the following:

Vernon G. Stejskal  
UTAH ATTORNEY GENERAL'S OFFICE (348)  
348 E SOUTH TEMPLE  
SALT LAKE CITY, UT 84111  
(801) 524-3081

Richard W. Daynes  
US ATTORNEY'S OFFICE (UT)  
185 S. STATE ST. STE #300  
SALT LAKE CITY, UT 84111  
(801) 524-5682

  
German T. Flores

United States Probation Office  
for the District of Utah

RECEIVED

Report on Offender Under Supervision

MAY 17 2010

Name of Offender: **Shane Brannon**

Docket Number **JDCR-00661-001 TC**

Name of Sentencing Judicial Officer: **Honorable Tena Campbell**  
**Chief U.S. District Judge**

Date of Original Sentence: **January 29, 2010**

Original Offense: **Possession of Child Pornography**

Original Sentence: **5 years probation**

Type of Supervision: **Probation**

Supervision Began: **January 29, 2010**

**SUPERVISION SUMMARY**

On January 29, 2010, the defendant began a term of probation which included the special condition that he have no unsupervised contact with minors. At the time, the Court specified that the defendant's two children, ages 17 and 16, were an exception. The defendant is divorced and currently resides with his 17-year-old daughter. His son, age 16, lives with his mother, but spends part of his time at the defendant's residence, where he has his own room.

The defendant has been participating in sex-offender treatment since February of 2010. He is currently in the process of moving from Phase 1 to Phase 2. During therapy, the defendant recently made disclosures that he has had two inappropriate sexual incidents in the past. The defendant reported that a few years ago, his daughter's friend was spending the night and, while she slept, the defendant moved her panties to one side in order to see her vagina. In the second disclosure, the defendant reported that, a few years ago, while on vacation with his son, at a motel, he placed his mouth over his son's penis. The defendant told the therapist this was a one-time incident.

Mr. Brannon's disclosure reveals a possible risk to the community, specifically to minor children. In discussing the information with Dr. Ron Boyce with the Center for Family Development, it was mutually agreed by Dr. Boyce and this officer that, for the time being, it would be in the best interest of the defendant's son to have only supervised contact with the defendant until the defendant achieves Phase 3 in his therapy. The defendant's daughter, who resides with the defendant, is believed to be turning 18 in the next few days.

If the Court desires more information or another course of action, please contact me at 801-535-2811.

I declare under penalty of perjury that the foregoing is true and correct.

*Mary Schuman for*

Mary Schuman  
U.S. Probation Officer  
Date: May 14, 2010

**THE COURT:**

☒ Approves the request noted above  
☐ Denies the request noted above  
☐ Other

*Tena Campbell*

Honorable Tena Campbell  
Chief U.S. District Judge

Date: 5-18-2010

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

CINDY L. STYBE,

Defendant.

PRELIMINARY ORDER OF  
FORFEITURE

Case #: 2:08CR00696-TS

JUDGE TED STEWART

---

IT IS HEREBY ORDERED that:

1. As a result of a plea of guilty to Count 1 of the Indictment for which the government sought forfeiture pursuant to 18 U.S.C. § 982(a)(2), the defendant Cindy L. Stybe shall forfeit to the United States all property constituting or derived from any proceeds the defendant obtained directly or indirectly, and any and all property, real and personal, used or intended to be used in any manner or part to commit and to facilitate the commission of violations of 18 U.S.C. § 1344, including but not limited to:

- 2007 Taiwan Golden Bee Motor Scooter, VIN:  
RFCRD11157Y103773
- 2006 Chevrolet Silverado Crewcab Pickup, VIN:  
1GCHK23D46F259555
- 2006 Chevrolet Colorado Pickup, VIN:

1GCDT146068298489

- 2007 Chevrolet Tahoe, VIN: 1GNFK13077J144758
- 2004 Derbi Scooter, VIN: VTHATLAA74G211897
- 2006 Volkswagen Jetta, VIN: 3VWST71K76M625068
- 2007 Honda ARX Watercraft, VIN: HPSC00551607
- 2007 Honda Aqua Trax Watercraft, VIN: HPSE0608J607
- 2007 Watercraft Trailer, VIN: 4JVV015137A0224441
- 2004 TNG Milano Motor Scooter, VIN:

5F02T79A75C500072

- Miscellaneous Jewelry seized from Cindy Stybe: 1.7 karat radiant cut diamond with a platinum engagement ring, Platinum anniversary band 1.07 karat diamond, sterling silver earrings, a Gucci Watch, SSWH Mop earrings, .46 pc 14 karat invisible earrings, Diamond and peridot earrings, and a open bar pendant, more particularly described as the letter "K" on a chain with diamond bangle.

2. The Court has determined that based on a guilty plea of bank fraud, that the above-named property is subject to forfeiture, that the defendant had an interest in the property, and that the government has established the requisite nexus between such property and such offense.

3. Upon entry of this Order the Attorney General, or its designee, is authorized to seize and conduct any discovery proper in identifying, locating, or disposing of the property subject to forfeiture, in accordance with Fed. R. Crim. P. 32.2(b)(3).

4. Upon entry of this Order the Attorney General or its



designee is authorized to commence any applicable proceeding to comply with statutes governing third party interests, including giving notice of this Order.

5. The United States shall publish notice of this Order on its intent to dispose of the property in such a manner as the Attorney General may direct. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the subject property.

6. Any person, other than the above named defendant, asserting a legal interest in the subject property may, within thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the Court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property, and amendment of the order of forfeiture pursuant to 21 U.S.C. § 853.

7. Pursuant to Fed. R. Crim. P. 32.2(b)(3), this Preliminary Order of Forfeiture shall become final as to the defendant at the time of sentencing and shall be made part of the sentence and included in the judgment.

8. Any petition filed by a third party asserting an interest in the subject property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's acquisition of the right, title, or interest in the subject property, any additional facts

supporting the petitioners claim and relief sought.

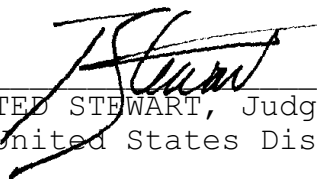
9. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

10. The United States shall have clear title to the subject property following the Court's disposition of all third party interests, or, if none, following the expiration of the period provided in 21 U.S.C. 853 which is incorporated by 18 U.S.C. § 982(b) for the filing of third party petitions.

11. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

DATED this 18th day of May, 2010.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART, Judge  
United States District Court

STEPHEN R. McCAUGHEY - 2149  
Attorney at Law  
10 West Broadway, Suite 650  
Salt Lake City, Utah 84101  
Telephone: (801) 364-6474  
Facsimile: (801) 364-5014

---

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

---

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**JERRY PETTY,**

**Defendant.**

:

:

:

:

:

**ORDER FOR COMPETENCY  
AND SANITY EVALUATION**

**Case No. 2:08-CR-819 TS**

---

Based on the motion of the Defendant, stipulated of the parties, and good cause shown: It is hereby ORDERED that the Defendant's Motion for a Competency and Sanity Evaluation is granted:

1. The Defendant is hereby committed to the custody of the Attorney General for transportation by the United States Marshal to a suitable federal facility or a psychiatric or psychological examination in accordance with 18 U.S.C. Section 4257(b).

2. The examiner shall prepare and file with this Court a report in accordance with 18 U.S.C. Section 4247(c), and provide copies to:

Stephen R. McCaughey  
Attorney for Defendant  
10 West Broadway, Ste 650  
Salt Lake City, UT 84101  
(801) 364-6474

Eric Benson  
Assistant United States Attorney  
185 South State Street, #300  
Salt Lake City, UT 84111  
(801) 325-3254

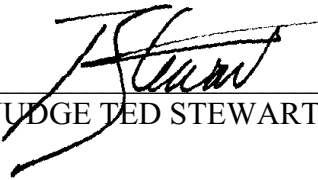
3. Said report shall be completed within a reasonable period, not to exceed forty-five (45) days. The examiner may request a reasonable extension, not to exceed fifteen (15) days, upon showing that additional time is necessary to observe and evaluate the Defendant.

4. Upon completion of the report, the Defendant shall be transported back to the District of Utah forthwith, for a competency hearing.

The trial date is stricken, and the time between this date and the competency hearing is excluded pursuant to 18 U.S.C., Section 3161(h)(1)(A).

DATED this 18th day of May 2010.

BY THE COURT:



---

JUDGE TED STEWART

CARLIE CHRISTENSEN, Acting United States Attorney (#633)  
CY H. CASTLE, Assistant United States Attorney (#480)  
Attorneys for the United States of America  
185 South State Street, #300  
Salt Lake City, Utah 84111-1506  
Telephone: (801) 524-5682  
Facsimile: (801) 524-6924

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

MAY 18 2010

BY D. MARK JONES, CLERK  
DEPUTY CLERK

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,	:	
	:	ORDER APPROVING MOTION TO
Plaintiff,	:	SUSPEND ORDER GRANTING
	:	THIRD AMENDED MOTION OF
vs.	:	UNITED STATES TO AMEND
	:	SCHEDULING ORDER
\$303,581.82 in U.S. Currency,	:	
	:	
Defendant.	:	Case No 2:08CV00670-DB
	:	
	:	Judge Dee Benson
	:	
	:	Magistrate Judge
	:	David O. Nuffer

---

Based upon joint motion of the parties to suspend Order Granting Third Amended Motion of United States to Amend Scheduling Order, and good cause appearing, it is ordered as follows:

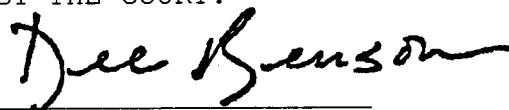
1. The deadlines imposed by the Third Amended Motion of United States to Amend Scheduling Order are suspended.

2. In the event the court grants the government's motion to modify the court's Memorandum Decision and Order dated April 21, 2010, the parties shall promptly file a stipulated scheduling order

to the court for approval.

Dated this 18<sup>th</sup> day of May, 2010.

BY THE COURT:

A handwritten signature in cursive script that reads "Dee Benson". The signature is written in black ink and is positioned above a horizontal line.

~~David O. Nuffer~~

~~Magistrate Judge~~

Honorable Dee Benson

U.S. District Court

# United States District Court

## CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

ORDER OF DETENTION PENDING TRIAL

*Judith Santana*

Case Number: *2:09-cr-00078-CW*

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

### Part I - Findings of Fact

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4)
- ☐ an offense for which the maximum sentence is life imprisonment or death
- ☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in
- ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

MAY 17 2010

D. MARIE JONES, CLERK

BY *[Signature]* DEPUTY CLERK

- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense
- ☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

### Alternate Findings (A)

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more prescribed in
- ☐ under 18 U.S.C. §924(c)
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

### Alternate Findings (B)

- ☒ (1) There is a serious risk that the defendant will not appear.
- ☒ (2) There is a serious risk that the defendant will endanger the safety of another person or the community

*Underlying offense, violation of pre trial release conditions*

### Part II - Written Statement of Reasons for Detention

I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

### Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: *5-17-10*

*[Signature]*

Signature of Judicial Officer

MAGISTRATE JUDGE ROBERT T. BRAITHWAITE

Name and Title of Judicial Officer

FILED  
U.S. DISTRICT COURT  
MAY 18 P 3:02  
CLERK

---

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION.**

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

RULON KODY SOMMERVILLE,

Defendant.

U.S. DISTRICT COURT  
**ORDER STRIKING TRIAL DATE AND  
SETTING BRIEFING SCHEDULE**

Case No. 2:09 CR 289 DS

Honorable David Sam

Based on motion of the defendant and good cause shown;

IT IS HEREBY ORDERED that the 2-day jury trial currently set for May 26, 2010, is stricken, and will be reset at a later date.

IT IS FURTHER ORDERED that the following briefing schedule is set with respect to Defendant's Motion to Dismiss:

1. Defendant's memorandum in support to be filed on or before **May 28, 2010.**
2. Government's response and opposition memorandum to be filed on or before **June 11, 2010.**
3. Defendant's reply to Government's response to be filed on or before **June 18, 2010.**

DATED this 18<sup>th</sup> day of May, 2010.

BY THE COURT:

  
HONORABLE DAVID SAM  
United States District Court Judge



FILED  
U.S. DISTRICT COURT

2010 MAY 18 A 10:55

RECEIVED

MAY 11 2010

OFFICE OF  
JUDGE TENA CAMPBELL

DISTRICT OF UTAH IN THE UNITED STATES DISTRICT COURT

BY: DEPUTY CLERK DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

GIOVANNI GALVON-MANZO,

Defendant.

**ORDER TO CONTINUE  
SENTENCING**

Case No. 2:09 CR 296 TC

Honorable Tena Campbell

Based upon the motion by defendant, GIOVANNI GALVON-MANZO, and good cause appearing;

IT IS HEREBY ORDERED that the sentencing hearing scheduled for May 26, 2010, in the above-entitled matter is continued to the 6/11/2010 day of ~~June~~, 2010, at 2:00 p.m.

SIGNED BY MY HAND this 12<sup>th</sup> day of May, 2010.

BY THE COURT:

Tena Campbell  
HONORABLE TENA CAMPBELL  
United States District Court Judge

UNITED STATES DISTRICT COURT

MAY 17 2010

BY D. MARK JONES, CLERK

DEPUTY CLERK

CENTRAL

DISTRICT OF

UNITED STATES OF AMERICA

v.

WILLIAM J. WALKER

**ORDER OF PROBATION  
UNDER 18 U.S.C. § 3607**

CASE NUMBER: 2:09-CR-00400-RTB

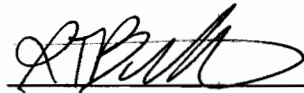
The defendant having been found guilty of an offense described in 21 U.S.C. 844, by reason of a plea of guilty and it appearing that the defendant (1) has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to controlled substances, and (2) has not previously been the subject of a disposition under this subsection,

**IT IS ORDERED** that the defendant is placed on probation as provided in 18 U.S.C. § 3607 for a period of twelve (12) months without a judgment of conviction first being entered. The defendant shall comply with the conditions of probation set forth on both pages of this Order, and the following special conditions:

**The defendant:**

- 1) Shall pay a fine in the amount of \$1,000 and a \$25 special assessment fee;
- 2) Shall submit to drug/alcohol testing, as directed by the probation office, and, if directed by probation, shall pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation office.

Date: 5-17-10



Signature of Judicial Officer

**Robert T. Braithwaite, U.S. Magistrate**

Name and Title of Judicial Officer

**CONSENT OF THE DEFENDANT**

I have read the proposed Order of Probation Under 18 U.S.C. § 3607 and the Conditions of Probation. I understand that if I violate any conditions of probation, the court may enter a judgment of conviction and proceed as provided by law. I consent to the entry of the Order.

I also understand that, if I have not violated any condition of my probation, the Court, without entering a judgment of conviction, (1) may dismiss the proceedings and discharge me from probation before the expiration of the term of probation, or (2) shall dismiss the proceedings and discharge me from probation at the expiration of the term of probation.

William J. Walker  
(Signature of Defendant)

1008 MADEIRA DRIVE #1

(Street Address)

ALBU. N. M. 87108

(City, State, Zip)

505-315-1470

(Telephone Number of Defendant)

(Signature of Defense Counsel)

(Date of Signing)

## CONDITIONS OF PROBATION

While the defendant is on probation, the defendant:

- 1) shall not commit another federal, state, tribal or local crime;
- 2) shall not leave the judicial district without the permission of the court or probation officer;
- 3) shall report to the probation officer as directed by the court and shall submit a truthful and complete written report within the first five days of each month;
- 4) shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) shall support his or her dependents and meet other family responsibilities;
- 6) shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 7) shall notify the probation officer within seventy-two hours of any change in residence or employment;
- 8) shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 9) shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 10) shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 11) shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 12) shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 13) shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without permission of the court;
- 14) as directed by the probation officer, shall notify third parties of risks that may be occasioned by defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notification and to confirm the defendant's compliance with such notification requirement;
- 15) shall not possess a firearm or destructive device.
- 16) shall submit to a search of his or her person, residence, office or vehicle under his/her control by a U.S. probation officer or any other authorized person under the immediate and personal supervision of the U.S. Probation Officer, without a search warrant, to ensure compliance with all conditions of release, at a reasonable time and manner based on a reasonable suspicion of contraband or evidence of a violation of a condition of probation. Defendant shall warn any other residents that the premise may be searched pursuant to this condition.

DATED: \_\_\_\_\_

by William J. Wallen  
Signature of Defendant

DATED: \_\_\_\_\_

by: \_\_\_\_\_  
Signature of Defense Counsel

FILED  
U.S. DISTRICT COURT

2010 MAY 18 P 4:06

DISTRICT OF UTAH

BY: DEPUTY CLERK

W. ANDREW MCCULLOUGH, L.L.C. (2170)  
Attorney for Defendant  
6885 South State Street, Suite 200  
Midvale, Utah 84047  
Telephone: (801) 565-0894

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---oooOooo---

UNITED STATES OF AMERICA,	:	ORDER TERMINATING
	:	PROBATION, AND OF
Plaintiff,	:	DISMISSAL
	:	
vs.	:	
	:	
VALERIE D. DOUROUX,	:	Case No. 2:09-cr-00445
	:	
Defendant.	:	Judge Robert Braithwaite

---oooOooo---

THIS MATTER came on regularly before Hon. Robert Braithwaite, Magistrate Judge of the above-entitled court, pursuant to Defendant's Motion to Terminate Probation, dated May 12, 2010. Probation Services having stipulated to the termination, and good cause appearing therefor, the Court now makes and enters the following ORDER:

Defendant's Probation in this matter is terminated pursuant to the terms of 18 U.S.C. § 3607, and this action is hereby

dismissed.

DATED this 18<sup>th</sup> day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read "R. Braithwaite", enclosed within a large, loopy oval flourish.

---

Robert Braithwaite  
Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the forgoing Order of Dismissal on Stanley H. Olsen, Attorney for Plaintiff, at 185 S. State St., Suite 300, Salt Lake City, UT 84111, and by e-mail at Stanley.Olsen@usdoj.gov on the 18th day of May, 2010.

/s/ W. Andrew McCullough

PETER STIRBA (Bar No. 3118)  
DARIN B. GOFF (Bar No. 11355)  
KATHLEEN ABKE (Bar No. 12422)  
**STIRBA & ASSOCIATES**  
215 South State Street, Suite 750  
P.O. Box 810  
Salt Lake City, Utah 84110-0810  
Telephone: (801) 364-8300  
Facsimile: (801) 364-8355  
E-mail: [dgoff@stirba.com](mailto:dgoff@stirba.com)

*Attorneys for Defendant Adrian Angus Wilson*

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

LESTER HEMMERT MOWER, EVA  
JEANETTE MOWER, ADRIAN ANGUS  
WILSON, and NATHAN WHITNEY DRAGE,

Defendant.

**ORDER GRANTING NON-OPPOSED  
MOTION TO PERMIT RENEWAL OF  
PASSPORT**

Case No. 2:09CR00460

Judge David Sam

This Court, having reviewed Adrian Angus Wilson's Non-Opposed Motion to Permit  
Renewal of Passport, and there being no opposition thereto, and for good cause shown,

IT IS HEREBY ORDERED that Mr. Wilson's Motion is GRANTED.

Mr. Wilson is permitted to apply for renewal of his United States Passport. The

Clerk's Office shall temporarily return Mr. Wilson's United States Passport to him for the purpose of renewing his United States Passport. Mr. Wilson will deliver his renewed United States Passport to the Clerk's Office within one business day of receipt.

DATED 18<sup>th</sup>, May, 2010.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "David Sam".

~~MAGISTRATE~~ JUDGE DAVID SAM

US. DISTRICT COURT  
Senior Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of May, 2010, a true copy of the foregoing **ORDER GRANTING NON-OPPOSED MOTION TO PERMIT RENEWAL OF PASSPORT** was served by the method indicated below, to the following:

Mark Hirata  
Assistant U.S. Attorney  
185 S. State Street, #400  
Salt Lake City, Utah 84111

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ Electronic Filing

Joseph R. Goodman, Jr.  
57 West 200 South, Ste. 200  
Salt Lake City, Utah 84101

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ Electronic Filing

James C. Haskins  
Haskins & Associates  
126 East South Temple, #1420  
Salt Lake City, Utah 84111

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ Electronic Filing

Nathan W. Drage  
4766 Holladay Blvd.  
Holladay, Utah 84117

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ Electronic Filing

/s/ Zachary B. Hoddy

Legal Assistant



---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

FELIX ZACAPALA-DIAZ,

Defendant.

Case # 2:09CR00717-TS

FINAL ORDER OF FORFEITURE

JUDGE: TED STEWART

---

WHEREAS, on February 23, 2010, this Court entered a Preliminary Order of Forfeiture, ordering the Defendant to forfeit the Mossberg 20 gauge short-barreled shotgun, Serial Number: Unknown; and

WHEREAS, the United States caused to be published on the government website [www.forfeiture.gov](http://www.forfeiture.gov) notice of this forfeiture and of the intent of the United States to dispose of the property in accordance with the law and as specified in the Preliminary Order, and further notifying all third parties of their right to petition the Court within thirty (30) days for a hearing to adjudicate the validity of their alleged legal interest in the property; and

WHEREAS, notice was served upon Felix Zacapala-Diaz; and

WHEREAS, no timely petition has been filed; and

WHEREAS, the Court finds that the Defendant had an interest in the property that is subject to forfeiture pursuant to 21 U.S.C. § 853;

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

- Mossberg 20 gauge short-barreled shotgun, Serial Number: Unknown

is hereby forfeited to the United States of America pursuant to 21 U.S.C. § 853.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all right, title and interest to the property described above is hereby condemned, forfeited and vested in the United States of America, and shall be disposed of according to law.

IT IS FURTHER ORDERED that the United States District Court shall retain jurisdiction in the case for the purpose of enforcing this Order.

SO ORDERED; Dated this 18th day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Ted Stewart", is written over a horizontal line.

TED STEWART, Judge  
United States District Court

FILED  
U.S. DISTRICT COURT

2010 MAY 18 A 10:55

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

BY: DEPUTY CLERK DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, :

2:09 CR 841 TC

Plaintiff,

vs.

AFUHIA MASIU MANATAU, a/k/a  
ROCKY MANATAU,

Defendant.

ORDER GRANTING  
MOTION TO RESCHEDULE  
SENTENCING HEARING

On the Motion of the United States, and good cause appearing, the motion of the United States to reschedule the sentencing hearing in this case is granted. The hearing set for May 27, 2010 at 2:15 p.m. is stricken, and the hearing is reset for May  
24, 2010 at 130 a.m./p.m.

DATED this 18<sup>th</sup> day of May, 2010.

Tena Campbell

TENA CAMPBELL  
Chief United States District Judge

MAY 18 2010

D. MARK JONES, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

---

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff(s),	)	Case No. 2:09CR0869-001TC
	)	
v.	)	CONSENT TO ENTRY OF PLEA
	)	OF GUILTY BEFORE THE
Adam K. Thompson	)	MAGISTRATE JUDGE AND
	)	ORDER OF REFERENCE
Defendant(s).	)	

---

Pursuant to 28 U.S.C. § 636(b)(3), the defendant, Adam K. Thompson, after consultation and agreement with counsel, consents to United States Magistrate Judge Brooke C. Wells accepting defendant's plea of guilty and to the Magistrate Judge conducting proceedings pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The defendant also acknowledges and understands that sentencing on his plea of guilty will be before the assigned District Judge after a pre-sentence investigation and report, and compliance with Fed.R.Crim.P. 32.

The United States, by and through the undersigned Assistant United States Attorney, consents to the Magistrate Judge conducting plea proceedings pursuant to Fed.R.Crim.P. 11, and accepting the defendant's plea of guilty as indicated above, pursuant to such

proceedings.

DATED this 18 day of May, 2010.

Adam Kay Thompson  
Defendant

[Signature]  
Attorney for Defendant

Wm K Kendall  
Assistant United States Attorney

**ORDER OF REFERENCE**

Pursuant to 28 U.S.C. § 636(b)(3), and the consent of the parties above mentioned, including the defendant,

**IT IS HEREBY ORDERED** that United States Magistrate Judge Brooke C. Wells shall hear and conduct plea rendering under Fed.R.Crim.P. 11, and may accept the plea of guilty from the defendant pursuant thereto after full compliance with Fed.R.Crim.P. 11.

DATED this 17<sup>th</sup> day of May, 2010

BY THE COURT:

Jena Campbell  
USA v. Adam K. Thompson  
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

KEN CLARK, an individual,  
Plaintiff,

vs.

MORINDA PROPERTIES ESCALA  
LODGES, LC, a Utah limited liability  
company; U.S. BANK NATIONAL  
ASSOCIATION; SILVERADO  
DEVELOPMENT INC. d/b/a SDI  
PROPERTIES; KERRY ASAY, an  
individual; KIM ASAY, an individual; JOHN  
WADSWORTH, an individual; WAYNE  
TURNER, an individual; DONALD E.  
MULLEN, an individual; EXTREME  
HOLDING, LLC d/b/a PRUDENTIAL  
UTAH REAL ESTATE, a Utah limited  
liability company; DOES 1-20,  
Defendants.

MEMORANDUM DECISION AND  
ORDER GRANTING DEFENDANT  
U.S. BANK'S MOTION FOR  
SUMMARY JUDGMENT

Case No. 2:09-CV-136-TS

**I. INTRODUCTION**

This matter is before the Court on Defendant U.S. Bank's Motion for Summary Judgment. For the reasons set forth below, the Court will grant the Motion.

## II. BACKGROUND

The following facts are undisputed. In June 2005, Plaintiff signed a Real Estate Purchase Contract (“REPC”) for the purchase of a condominium at Escala Lodges in Park City. This unit was to be constructed by Defendant Morinda Properties Escala Lodges, LC (“Morinda”). Plaintiff deposited a total of \$120,300 in connection with the purchase of this unit, \$46,254.17 of which was held by U.S. Bank. The REPC stated that, once certain conditions were met, Plaintiff’s deposits became “totally non-refundable to buyer.”<sup>1</sup> Because these conditions were met soon after closing, Plaintiff’s deposits became non-refundable under the terms of the contract.<sup>2</sup>

To finance construction of these units, Defendant Morinda entered into a loan agreement with Defendant U.S. Bank in October 2005.<sup>3</sup> As a security for this loan, Defendant Morinda executed a Construction Loan Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (“Trust Deed”). The Trust Deed granted Defendant U.S. Bank, as a secured party, a security interest in certain described real and personal property,<sup>4</sup> including:

(a) ‘[a]ll right, title, interest and estate’ of Defendant Morinda in and to certain categories of contracts, including those ‘relating to the installation, construction or demolition of any of the Improvements’ and those ‘for marketing, leasing, advertising, use, or sale of the Improvements’ and (b) ‘[a]ll now existing or hereafter acquired chattel paper, account, deposit account, payment intangibles,

---

<sup>1</sup>Docket No. 3, Ex. A ¶ 2.4

<sup>2</sup>*Id.* ¶ 8.3.3 (stating that deposits become non-refundable as soon as they are delivered to the brokerage).

<sup>3</sup>*Id.* at 6.

<sup>4</sup>Docket No. 31, Ex. J, Recital C.

letter of credit rights, supporting obligations, good will and other intangible personal property owned by [Morinda] and pertaining to the Property or the Improvements.’<sup>5</sup>

As additional security for this loan, Defendant Morinda deposited funds relating to purchase contracts for condominium units into a U.S. Bank “control account.”<sup>6</sup> This account contained, among other funds, \$46,254.17 relating to a deposit by Plaintiff under the REPC.<sup>7</sup> This deposit had already become non-refundable.<sup>8</sup>

Defendant U.S. Bank was not involved in the marketing and sales efforts that resulted in Plaintiff entering into the REPC<sup>9</sup> and did not enter into the loan agreement with Defendant Morinda until four months after the REPC was signed.

### **III. STANDARD OF REVIEW**

Summary judgment is proper if the moving party can demonstrate that there is no genuine issue of material fact and it is entitled to judgment as a matter of law.<sup>10</sup> In considering whether genuine issues of material fact exist, the Court determines whether a reasonable jury could return a verdict for the nonmoving party in the face of all the evidence presented.<sup>11</sup> The Court is

---

<sup>5</sup>Docket No. 36, at 7 (citing Docket No. 31, Ex. J, at 2, 4).

<sup>6</sup>*Id.* at 8.

<sup>7</sup>*Id.*

<sup>8</sup>*See supra* notes 1–2.

<sup>9</sup>Docket No. 36, at 8.

<sup>10</sup>FED. R. CIV. P. 56(c).

<sup>11</sup>*See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); *Clifton v. Craig*, 924 F.2d 182, 183 (10th Cir. 1991).



required to construe all facts and reasonable inferences in the light most favorable to the nonmoving party.<sup>12</sup>

Once a motion for summary judgment is properly made and supported, “an adverse party may not rest upon the mere allegations or denials in his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial, if he does not so respond, summary judgment, if appropriate, shall be entered against him.”<sup>13</sup> If the adverse party does not respond, “[a]ll material facts of record meeting the requirements of Fed. R. Civ. P. 56 that are set forth with particularity in the statement of the movant will be deemed admitted for the purpose of summary judgment.”<sup>14</sup>

#### **IV. DISCUSSION**

Two of Plaintiff Ken Clark’s four causes of action are against Defendant U.S. Bank. Plaintiff first alleges that he is entitled to recover from Defendant U.S. Bank for Defendant Morinda’s alleged breach of the REPC. Plaintiff’s second claim against Defendant U.S. Bank relates to an alleged violation of the Utah Uniform Land Sales Practices Act (“ULSPA”). Defendant U.S. Bank filed a Motion for Summary Judgment on both claims. Plaintiff did not respond to this Motion.

##### **A. Claim for Breach of Contract**

Plaintiff first alleges that Defendant U.S. Bank, by virtue of holding some of Plaintiff’s

---

<sup>12</sup>See *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Wright v. Southwestern Bell Tel. Co.*, 925 F.2d 1288, 1292 (10th Cir. 1991).

<sup>13</sup>FED. R. CIV. P. 56(e)(2).

<sup>14</sup>DUCivR 56-1(c) (Dec. 2009).

deposit in connection with the REPC, is bound by the terms of the REPC. Plaintiff further alleges that Defendant Morinda breached the REPC, leaving Plaintiff entitled to recover from U.S. Bank. However, the Court previously ordered summary judgment on Plaintiff's claim for breach of contract against Morinda, leaving Plaintiff with no claim for breach of contract against Defendant U.S. Bank. Furthermore, even without the prior ruling, Defendant U.S. Bank would still be entitled to summary judgment on this claim for the following reasons.

First, the undisputed facts show that there was no contractual relationship between Plaintiff and Defendant U.S. Bank. Defendant U.S. Bank argues that the REPC was not among the contracts given by Defendant Morinda as security under the loan agreement.<sup>15</sup> However, the Court need not determine whether the REPC was included as a security, as the Trust Deed granted a security interest in only Defendant Morinda's *rights* under the specified contracts to Defendant U.S. Bank; not its obligations.<sup>16</sup>

This transfer of rights is insufficient to create a contractual relationship between Plaintiff and Defendant U.S. Bank. "Absent an assumption of liability . . . [the transfer of the rights under] a contract does not impose on the assignee the assignor's duties or liabilities under the contract."<sup>17</sup> Utah State Law also states that "[t]he existence of a security interest . . . given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in

---

<sup>15</sup>Docket No. 36, at 10.

<sup>16</sup>Docket No. 31, Ex. J, at 2.

<sup>17</sup>*Winegar v. Froerer Corp.*, 813 P.3d 104, 107 (Utah 1991).

contract or tort for the debtor's acts or omissions.”<sup>18</sup> Because the Trust Deed conveyed only a security interest in Morinda's rights, this Court finds no contractual relationship between Plaintiff and U.S. Bank, and therefore, no breach of contract by U.S. Bank.

Plaintiff also refers to funds in the U.S. Bank control account as if they were his own, alleging that Defendant U.S. Bank has a duty to return them.<sup>19</sup> However, under the REPC, Plaintiff's deposits on the unit had already become non-refundable,<sup>20</sup> leaving Plaintiff with only “a general unsecured claim for monetary damages against Morinda for the amounts [Plaintiff] deposited.”<sup>21</sup>

#### B. Claim for Violation of the ULSPA

As the Court has already ordered summary judgment on the breach of contract claim, the only remaining claim against Defendant U.S. Bank relates to its possible liability for the alleged violation of the ULSPA. Plaintiff does not allege that Defendant U.S. Bank violated the terms of the Act directly, but that they were violated by Defendant Morinda. Plaintiff argues that this violation of the Act voided the REPC *ab initio*, thereby requiring Defendant U.S. Bank to return Plaintiff's deposit.<sup>22</sup>

---

<sup>18</sup>UTAH CODE ANN. 1953 § 70A-9a-402.

<sup>19</sup>Plaintiff's Complaint, Docket No. 3, at 6, 8.

<sup>20</sup>Docket No. 3, Ex. A ¶ 2.4; *see also* Docket No. 36, at 5–6 (Defendant U.S. Bank's statement of undisputed facts, which were uncontroverted by Plaintiff, explaining the conditions under which and dates by when Plaintiff's deposits became non-refundable under the REPC).

<sup>21</sup>Docket No. 36, at 4.

<sup>22</sup>Docket No. 3, Ex. A, at 8.

Summary judgment on this claim is appropriate because, even if the Act was violated by sale of the unit, the contract would not become void *ab initio*. The ULSPA allows civil remedies for violations of the Act, none of which would void the contract.<sup>23</sup> Furthermore, none of these remedies would apply to a party, such as Defendant U.S. Bank, that is not or does not control a subdivider of the land sold.<sup>24</sup>

#### V. CONCLUSION

It is therefore

ORDERED that Defendant U.S. Bank's Motion for Summary Judgment (Docket No. 35) is GRANTED.

DATED May 18, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Ted Stewart", is written over a horizontal line.

TED STEWART  
United States District Judge

---

<sup>23</sup>UTAH CODE ANN. 1953 § 57-11-17.

<sup>24</sup>*See id.* at (1)(a), (3) (setting forth who is liable for civil penalties under the ULSPA).

CARLIE CHRISTENSEN (#633)  
United States Attorney  
JARED BENNETT (#9097)  
Assistant United States Attorney  
MICHAEL G. PITMAN (Pro Hac Vice)  
CURTIS C. SMITH (Pro Hac Vice)  
Trial Attorneys, Tax Division  
U.S. Department of Justice  
P.O. Box 683  
Ben Franklin Station  
Washington, D.C. 20044-0683  
Telephone: (202) 305-7938  
Facsimile: (202) 307-0054  
Michael.G.Pitman@usdoj.gov  
Counsel for the  
United States of America

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

MAY 14 2010

D. MARK JONES, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

United States of America,  
Plaintiff,  
v.  
Jon McBride,  
Defendant.

Case No. 2:09-cv-378-DB

~~PROPOSED~~ ORDER

Upon joint motion of Plaintiff the United States of America, and the Defendant Jon  
McBride, and for good cause shown, it is hereby ORDERED that:

The deadline for the completion of fact discovery is extended until 7/23/10;

The deadline for supplementation of disclosures and discovery under Rule  
26(e) is extended until 7/23/10;

The deadline for filing dispositive or potentially dispositive motions is  
extended until 8/26/10;

The deadline for Plaintiff's Rule 26(a)(3) Pretrial Disclosures is extended until 10/25/10;

The deadline for Defendant's Rule 26(a)(3) Pretrial Disclosures is extended until 11/8/10;

The deadline for the Special Attorney Conference is extended until 11/22/10;

The deadline for the Settlement Conference is extended until 11/22/10;

The Final Pretrial Conference is rescheduled for 11/30/10; and 2:30 p.m.

Trial is rescheduled for 12/13/10. 8:30 A.M. 2 day bench trial

Dated 5/14, 2010.



DEE BENSON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

DAVID A. SELF,  Plaintiff,    vs.   COUNTRYWIDE HOME LOANS, INC., and BANK OF AMERICA,  Defendants.	MEMORANDUM DECISION AND ORDER DENYING IN PART DEFENDANTS' MOTION TO DISMISS    Case No. 2:09-CV-746 TS
---	---

This matter is before the Court on Defendants' Motion to Dismiss Plaintiff's Amended Complaint pursuant to FED.R.CIV. P. 12(b)(6). For the reasons set forth below, the Court will deny the Motion as to the TILA rescission claim but grant it as to the other causes of action.

I. STANDARD OF REVIEW

In considering a motion to dismiss under Rule 12(b)(6), all well-pleaded factual allegations, as distinguished from conclusory allegations, are accepted as true and viewed

in the light most favorable to Plaintiff as the nonmoving party.<sup>1</sup> Plaintiff must provide “enough facts to state a claim to relief that is plausible on its face.”<sup>2</sup> All well-pleaded factual allegations in the amended complaint are accepted as true and viewed in the light most favorable to the nonmoving party.<sup>3</sup> But, the Court “need not accept . . . conclusory allegations without supporting factual averments.”<sup>4</sup> “The court’s function on a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff’s complaint alone is legally sufficient to state a claim for which relief may be granted.”<sup>5</sup> In the *Twombly* case, the Supreme Court explained that a plaintiff must “nudge[ ][her] claims across the line from conceivable to plausible” to survive a motion to dismiss.<sup>6</sup> Thus, the mere metaphysical possibility that some plaintiff could prove some set of facts in support of the pleaded claims is insufficient; the complaint must give

---

<sup>1</sup>*Ruiz v. McDonnell*, 299 F.3d 1173, 1181 (10th Cir. 2002).

<sup>2</sup>*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007) (dismissing complaint because Plaintiffs “have not nudged their claims across the line from conceivable to plausible”).

<sup>3</sup>*GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384 (10th Cir. 1997).

<sup>4</sup>*Southern Disposal, Inc., v. Texas Waste*, 161 F.3d 1259, 1262 (10th Cir. 1998); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

<sup>5</sup>*Miller v. Glanz*, 948 F.2d 1562, 1565 (10th Cir. 1991).

<sup>6</sup>550 U.S. at 547.



the court reason to believe that this plaintiff has a reasonable likelihood of mustering factual support for these claims.<sup>7</sup>

The Supreme Court provided greater explanation of the standard set out in *Twombly* in *Ashcroft v. Iqbal*.<sup>8</sup> In *Iqbal*, the Court reiterated that while FED. R. CIV. P. 8 does not require detailed factual allegations, it requires “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.”<sup>9</sup> “A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’”<sup>10</sup> “Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’”<sup>11</sup>

The Court in *Iqbal* stated:

Two working principles underlie our decision in *Twombly*. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not show[n]—that the pleader is entitled to relief.

---

<sup>7</sup>*The Ridge at Red Hawk, LLC v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007).

<sup>8</sup>129 S. Ct. 1937 (2009).

<sup>9</sup>*Id.* at 1949.

<sup>10</sup>*Id.* (quoting *Twombly*, 550 U.S. at 555).

<sup>11</sup>*Id.* (quoting *Twombly*, 550 U.S. at 557).

In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.<sup>12</sup>

## II. FACTUAL BACKGROUND

Plaintiff's Complaint alleges the following: On or about July 21, 2006, Defendant Countrywide Home Loans, Inc. (Countrywide) made a loan to Plaintiff in the principle sum of \$1,680,000, secured by a Deed of Trust recorded against his residence located in Sandy, Utah.

During the loan process, Countrywide did not disclose accurately to Plaintiff the following: the annual percentage rate (APR), any fees paid directly or indirectly by Plaintiff to others in connection with the loan, or Plaintiff's alleged right to rescind the loan transaction. Countrywide also did not give Plaintiff two copies of a cancellation notice.

At the time of the loan, both Plaintiff and Countrywide understood the value of the property to be about \$1,680,000, based on an appraisal performed by a licenced appraiser. By the time he filed his Complaint, on August 24, 2009, Plaintiff believed that the value of the property had dropped to \$400,000.

Plaintiff also alleges that Countrywide inflated the value of its loan portfolio by making a loan to Plaintiff that he could not afford. Countrywide then marketed its loan portfolio in the securities market at an inflated value.

---

<sup>12</sup>*Id.* at 1949-50 (internal quotation marks and citations omitted).

In addition, the Court notes the following: The Complaint in the present case is so sparse that it does not state the reason for the loan or when it was in foreclosure proceedings. The Complaint contains no allegations against Defendant Bank of America.

### III. DISCUSSION

#### A. POSITIONS OF THE PARTIES

Plaintiff's Complaint contains four claims: rescission under the Truth in Lending Act (TILA) as described in 15 U.S.C. § 1635 and its implementing Regulation Z;<sup>13</sup> rescission under Utah state law based on mutual mistake in value; fraud and conspiracy; and negligence.

Defendants move to dismiss under Fed. R. Civ. P. 12(b)(6) for the failure to state a claim upon which relief can be granted. Defendants move to dismiss the TILA claim as barred by the statute of limitations. They move to dismiss the fraud claims because the sparse allegations do not give rise to a plausible claim. They move to dismiss the state law rescission claim because Plaintiff has not tendered the return of the money he received from Countrywide and also because there is no allegation of a mutual mistake of a past or existing fact. Defendants move to dismiss the negligence claim because Plaintiff fails to allege facts supporting each of the elements of negligence.

---

<sup>13</sup>12 C.F.R §§ 226.15(d)(1), 226.23(d)(1).

## B. BANK OF AMERICA

Defendant Bank of America's Motion to Dismiss for failure to state a claim is based on the fact that the Complaint does not contain a single allegation against it. Plaintiff submits nothing in opposition to Bank of America's position.

The Court agrees that the Complaint fails to state a claim against Bank of America because it contains no allegations as to Bank of America. Therefore, all claims against Bank of America will be dismissed under FED. R. CIV. P. 12(b)(6)

## C. RESCISSION UNDER TILA

Plaintiff alleges in his first cause of action that he is entitled to rescind the loan against Defendant Countrywide pursuant to 15 U.S.C. § 1635. The Complaint does not specify which subsection he is relying on, but his opposition memorandum makes it clear that it is § 1635(i).

Countrywide move to dismiss because the TILA claim is barred by the one-year statute of limitations for violations of disclosure requirements under TILA, set forth in 15 U.S.C. § 1640(e), and the specific rescission is barred by three-year statute of limitations set forth in 15 U.S.C. § 1635(f). Countrywide argues that the date Plaintiff alleges the loan was made, July 21, 2006, is more than three years from the date this case was filed on August 24, 2009.

In his Complaint, Plaintiff asserted that the Utah statute of limitations is applicable to this action,<sup>14</sup> but has not raised that argument in his opposition memorandum. Plaintiff

---

<sup>14</sup>Complaint ¶ 15.

now agrees that a rescission claim under 15 U.S.C. § 1635(i) is subject to the three-year limitation period,<sup>15</sup> but does not specifically address why his claim is not barred by the three-year period. Instead, Plaintiff merely states that the Complaint does state a claim for all causes of action, but that he will address only “his right to rescind the loan transaction under subsection 1635(i) based on the foreclosure of the mortgage loan.”<sup>16</sup> Plaintiff does attach a copy of a document purporting to be such a Notice as Ex. A to his opposition to the Motion to Dismiss. That purported Notice is dated July 20, 2009. However, there is nothing to show it was served on Countrywide and Countrywide disputes its validity.

Plaintiff argues that the loan at issue is not a “residential mortgage transaction,” which would be exempted from TILA’s rescission requirements, because it was a loan to refinance two existing loans.<sup>17</sup> Defendants do not dispute this assertion and instead argue only that the statute of limitations bars the TILA rescission claim.<sup>18</sup>

If the Court were to consider Ex. A, it would be required to convert this matter to a motion for summary judgment in order to consider such a matter outside the pleadings.<sup>19</sup> The Court declines to do so. Instead, the Court will deny the Motion to Dismiss as to the

---

<sup>15</sup>Docket No. 7 at 5.

<sup>16</sup>*Id.* at 2.

<sup>17</sup>*Id.* at 4 n.1.

<sup>18</sup>Docket No. 8 at 1.

<sup>19</sup>FED. R. CIV. P. 12(d) (providing that “[i]f, on a motion under Rule 12(b)(6) . . . matters outside the pleadings are presented to and not excluded by the Court, the motion must be treated as one for summary judgment under Rule 56” and Plaintiff given “a reasonable opportunity to present all the material that is pertinent to the motion.”)

first cause of action without prejudice to the re-raising the issue on summary judgment.

#### D. FRAUD AND CONSPIRACY

Countrywide argues that Plaintiff has not pleaded his fraud claim with particularity and fails to state a claim for either fraud or conspiracy to defraud. Plaintiff explains that he chose not to address this argument except to state as a broad general conclusion that the Complaint states claims upon which relief can be granted.<sup>20</sup>

For a plaintiff to bring a successful claim of fraud against a defendant, “all the elements of fraud must be established by clear and convincing evidence.”<sup>21</sup> The elements that must be shown are:

(1) a representation; (2) concerning a presently existing material fact; (3) which was false; (4) which the representer either (a) knew to be false, or (b) made recklessly, knowing that he had insufficient knowledge on which to base such representation; (5) for the purpose of inducing the other party to act upon it; (6) that the other party, acting reasonably and in ignorance of its falsity; (7) did in fact rely upon it; (8) and was thereby induced to act; (9) to his injury and damage.<sup>22</sup>

Plaintiff’s allegation of fraud must meet the requirements set out in FED. R. CIV. P. 9(b). Rule 9(b) provides that “[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.” “Simply stated, a complaint must ‘set for the time, place and contents of the false representation, the identity of the

---

<sup>20</sup>Docket No. 7, at 2.

<sup>21</sup>*Secor v. Knight*, 716 P. 2d 790, 794 (Utah 1986) (citations omitted).

<sup>22</sup>*Id.*

party making the false statements and the consequences thereof.”<sup>23</sup> “Rule 9(b) requires that a plaintiff set forth the who, what, where and how of the alleged fraud.”<sup>24</sup>

Plaintiff fails to meet the pleading requirements of Rule 9(b). The Complaint alleges that through employees, agents, and independent contractors, Defendant conspired to defraud Plaintiff by providing a loan that he could not qualify for in order to inflate the value of its portfolio to sell it on the securities market, that its agents knew the value was inflated, and expected that the value would appreciate.

Plaintiff’s allegations are insufficient to support a claim for fraud. Plaintiff’s allegations are merely “‘naked assertion[s]’ devoid of ‘further factual enhancement.’”<sup>25</sup> Those facts which are alleged do not nudge Plaintiff’s claims across the line from conceivable to plausible. Plaintiff does not describe with sufficient specificity what representations were made, who made them, and when those representations were made. These broad, vague, and conclusory allegations do not meet the requirements of Rule 9(b).

Turning to Plaintiff’s conspiracy claim, under Utah law Plaintiff must show five elements in order to prove a civil conspiracy: “(1) a combination of two or more persons; (2) an object to be accomplished; (3) a meeting of the minds on the object of course of

---

<sup>23</sup> *Schwartz v. Celestial Seasonings, Inc.*, 124 F.3d 1246, 1252 (10th Cir. 1997) (quoting *Lawrence Nat’l Bank v. Edmonds (In re Edmonds)*, 924 F.2d 176, 180 (10th Cir. 1991)).

<sup>24</sup> *United States ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah*, 472 F.3d 702, 727 (10th Cir. 2006) (quotation marks and citation omitted).

<sup>25</sup> *Iqbal*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S. at 557).

action; (4) one or more unlawful, overt acts; and (5) damages as a proximate result thereof.”<sup>26</sup>

Plaintiff’s Amended Complaint fails to sufficiently plead a factual basis of conspiracy. Although Rule 8 does not require “detailed factual allegations,” it does “demand[] more than an unadorned, the defendant-unlawfully-harmed-me accusation.”<sup>27</sup> The Supreme Court has stated that “[w]hile legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.”<sup>28</sup> Here, Plaintiff merely makes a legal conclusion, “couched as a factual allegation,” that a conspiracy has taken place and provides nothing beyond that.<sup>29</sup> Therefore, Plaintiff’s cause of action for conspiracy to defraud must consequently be dismissed for failure to state a claim upon which relief may be granted.

#### E. STATE LAW RESCISSION CLAIM

Plaintiff’s second cause of action is for rescission under state law based on (1) the alleged fraud and (2) based on mutual mistake.

Plaintiffs claim for rescission based on fraud and/or conspiracy to defraud under state law is based on the same allegations as his fraud and conspiracy to defraud claims. For the reasons stated above, Plaintiff fails to allege fraud with particularity and, therefore,

---

<sup>26</sup> *Waddoups v. Amalgamated Sugar Co.*, 54 P.3d 1054, 1064 (Utah 2002) (citation omitted).

<sup>27</sup> *Iqbal*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555).

<sup>28</sup> *Id.* at 1950.

<sup>29</sup> *Id.*



fails to state a claim for rescission under state law based on fraud and/or conspiracy to defraud.

Plaintiff's claim for rescission under state law concludes that it is based on a mutual mistake. However, Plaintiff does not allege that the parties' mutual understanding of the value of the property differed at the time of the loan was made. Under Utah law, a claim for mutual mistake "must concern a past or existing fact, not a future contingency."<sup>30</sup> "If the parties harbor only mistaken expectations as to the course of future events and their assumptions as to facts existing at the time of the contract are correct, rescission is not proper."<sup>31</sup> In the present case, Plaintiff has not alleged that the parties' mutual belief as to value at the time of the contract was not correct. Therefore, Plaintiff fails to state a claim for rescission under Utah state law.

#### F. NEGLIGENCE

Under Utah law:

To state a claim for negligence, Plaintiffs must establish four elements: "(1) that the defendant owed the plaintiff a duty, (2) that the defendant breached that duty, (3) that the breach of duty was the proximate cause of the plaintiff's injury, and (4) that the plaintiff in fact suffered injuries or damages."<sup>32</sup>

Plaintiff's allegations regarding negligence are conclusory. Plaintiff brings his claim for negligence as an alternative to his claims for fraud and conspiracy to defraud under an

---

<sup>30</sup>*Deep Creek Ranch, LLC v. Utah State Armory Bd.*, 2008 UT 3, ¶ 17, 178 P.3d 886, 890 (2008).

<sup>31</sup>*Id.*

<sup>32</sup>*Tuttle v. Olds*, 155 P.3d 893, (Utah App. 2007) (quoting *Webb v. Univ. of Utah*, 2005 UT 80, ¶ 9, 125 P.3d 906) (further citation omitted).

agency theory, relying on unspecified “fraudulent acts” and “conspiracy.”<sup>33</sup> For the reasons stated above, the claims of fraud and conspiracy are insufficient to state a claim. Plaintiff fails to allege specific non-conclusory allegations supporting the elements of negligence.

#### IV. CONCLUSION

Based on the foregoing, it is therefore

ORDERED that Defendant’s Motion to Dismiss (Docket No. 4) is GRANTED as to Bank of America and all claims against Bank of America are DISMISSED with prejudice.

It is further

ORDERED that Defendant’s Motion to Dismiss (Docket No. 4) pursuant to FED. R. CIV. P. 12(b)(6) is GRANTED as to Plaintiff’s second, third and fourth causes of action and is DENIED as to Plaintiff’s first cause of action.

DATED May 18, 2010.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

---

<sup>33</sup>Complaint at 42-47.

FILED  
U.S. DISTRICT COURT

2010 MAY 17 P 4:30

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

DISTRICT OF UTAH

BY:   
DEPUTY CLERK

GENNEL B. YEAGER,

Plaintiff,

v.

MICHAEL J. ASTRUE,

Commissioner of Social Security,

Defendant.

Case No. 2:09-cv-00839-DAK

**ORDER**

AND NOW, this 14<sup>th</sup> day of May, 2010, upon consideration of Defendant's Unopposed Motion to Remand, and good cause appearing therefor, the Court hereby REVERSES the Commissioner's decision in this matter under sentence four of 42 U.S.C. § 405(g),<sup>1</sup> and REMANDS the cause to the Defendant for further administrative proceedings, as follows:

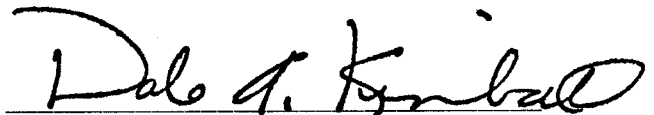
On remand, the Administrative Law Judge ("ALJ") will be directed to further develop the record, hold a new hearing, and issue a new decision. The ALJ should consult a medical expert; if available, the medical expert should have an expertise in

<sup>1</sup> The Clerk of the Court will enter a separate judgment pursuant to the Federal Rules of Civil Procedure, Rule 58.

psychology or psychiatry. The medical expert should be questioned regarding Plaintiff's functional limitations, especially in the area of concentration and attention, and determine whether any specific, work-related functional limitations stem from any deficits in concentration and attention. Further, the ALJ should discuss all medical opinions of record and explain the weight accorded to each opinion, specifically discussing why any treating source opinions are or are not entitled to controlling weight. If the ALJ declines to adopt limitations opined by medical sources, there should be an articulation of the reason(s) for not adopting the limitations that is in accordance with applicable regulations and Social Security Rulings.

Accordingly, it is ordered that this case is reversed and remanded for further proceedings under sentence four of 42 U.S.C. § 405(g).

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dale A. Kimble", written over a horizontal line.

The Honorable Dale A. Kimble  
United States District Court Judge

DATED this 14<sup>th</sup> day of May, 2010.

Marc T. Rasich, Esq.  
STOEL RIVES LLP  
201 South Main Street, Suite 1100  
Salt Lake City, UT 84111  
Tel.: (801) 578-6901  
Fax: (801) 578-6999

Eric J. Hardeman (*pro hac vice*)  
JONES DAY  
3 Park Plaza, Suite 1100  
Irvine, CA 92614  
Tel.: (949) 851-3939  
Fax: (949) 553-7539

*ATTORNEYS FOR DEFENDANT  
EXPERIAN INFORMATION SOLUTIONS, INC.*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

**AUDRIE STANLY RITTER fka  
AUDRIE STANLEY**

**Plaintiff,**

**v.**

**EQUIFAX INFORMATION  
SERVICES, LLC;  
EXPERIAN INFORMATION  
SOLUTIONS, INC.;  
TRANSUNION SETTLEMENT  
SOLUTIONS, INC.;  
DIVERSIFIED ADJUSTMENT  
SERVICE, INC.;  
PORTFOLIO RECOVERY  
ASSOCIATES;  
DOES 1-50**

**Defendants.**

**Case No: 2:09cv00898**

**Hon. Tena Campbell**

**ORDER GRANTING  
STIPULATION FOR DISMISSAL OF  
PLAINTIFF'S CLAIMS AGAINST  
EXPERIAN INFORMATION  
SOLUTIONS, INC. WITH PREJUDICE**

FILED  
U.S. DISTRICT COURT  
2010 MAY 17 P 2:38  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

The Court, having considered the Stipulation for Dismissal of Plaintiff Audrie Stanley Ritter's ("Plaintiff") claims against Experian Information Solutions, Inc. ("Experian"), and good cause appearing, hereby ORDERS that the parties' Stipulation is GRANTED, and Plaintiff's claims against Experian are dismissed with prejudice, with each side bearing its own costs.

Dated:

2010

*May 17, 2010. Jc*

*Tena Campbell*

Hon. Tena Campbell

HOLME ROBERTS & OWEN LLP

Scott R. Bialecki (*Pro Hac Vice*)

scott.bialecki@hro.com

Roger R. Myers (*Pro Hac Vice*)

roger.myers@hro.com

George M. Haley, #1302

george.haley@hro.com

Blaine J. Benard, #5661

blaine.benard@hro.com

Craig Buschmann, #10696

craig.buschmann@hro.com

299 South Main Street, Suite 1800

Salt Lake City, UT 84111-2263

Telephone: (801) 521-5800

Facsimile: (801) 521-9639

Attorneys for Plaintiff GOOGLE INC.

FILED  
U.S. DISTRICT COURT

220 MAY 10 AM 11:11

CLERK

BY: [Signature]

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

GOOGLE INC., a Delaware corporation,

Plaintiff,

v.

PACIFIC WEBWORKS, INC., a Nevada  
corporation, and DOES 1-50,

Defendants.

Case No. 2:09-cv-1068-BSJ

**[PROPOSED] ORDER GRANTING  
STIPULATED MOTION TO  
AMEND COMPLAINT**

**Judge Bruce S. Jenkins**

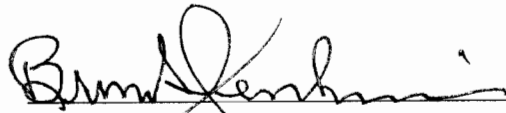
Having read all papers filed in connection with the Parties' Stipulated Motion to Amend Complaint ("Motion") and considered the issues raised therein,

IT IS HEREBY ORDERED that the Motion is Granted and Plaintiff Google's First Amended Complaint attached as Exhibit A to the Parties' Motion is deemed filed and entered as of the date of this Order.

2:09-cv-1068 J

SO ORDERED this 18 day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Bruce S. Jenkins", written over a horizontal line.

Bruce S. Jenkins  
United States District Court Judge



Approved as to form and substance.

/s/ George M. Haley  
HOLME ROBERTS & OWEN LLP  
Scott R. Bialecki (*Pro Hac Vice*)  
Roger R. Myers (*Pro Hac Vice*)  
George M. Haley, #1302  
Blaine J. Benard, #5661  
Craig Buschmann, #10696

Attorneys for Google Inc.

Date May 17, 2010

/s/ Jeffery M. Lillywhite  
Daniel W. Jackson, #1633  
Jeffery M. Lillywhite, #8920

Attorneys for Pacific WebWorks, Inc.

Date: May17, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_th day of May, 2010, I caused a true and correct copy of the  
**[PROPOSED] ORDER GRANTING STIPULATED MOTION TO AMEND**  
**COMPLAINT** to be served as follows:

Jeffery M. Lillywhite  
953 East 12400 South  
Suite A  
Draper, UT 84020

\_\_\_\_\_ U.S. Mail, postage prepaid  
\_\_\_\_\_ Hand Delivery  
\_\_\_\_\_ Facsimile  
\_\_\_\_\_ Overnight courier  
  X   E-Mail and/or CM/ECF

Daniel W. Jackson  
2157 Lincoln Street  
Salt Lake City, Utah 84106

\_\_\_\_\_ U.S. Mail, postage prepaid  
\_\_\_\_\_ Hand Delivery  
\_\_\_\_\_ Facsimile  
\_\_\_\_\_ Overnight courier  
  X   E-Mail and/or CM/ECF

By: /s/\_\_\_\_\_

FILED  
U.S. DISTRICT COURT  
MAY 18 P 3:09  
DISTRICT CLERK

---

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

---

JOAN JONES,

*Plaintiff,*

v.

WASHINGTON COUNTY, *et al.*,

*Defendants.*

**SCHEDULING ORDER**

Case No. 2:09-cv-1112

Judge David Sam

Pursuant to Fed.R. Civ P. 16(b), the Court received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that any initial pretrial hearing previously scheduled by the Court is hereby VACATED.

**\*\*ALL TIMES 4:30 PM UNLESS INDICATED\*\***

- | <b>1. PRELIMINARY MATTERS</b>                         | <b>DATE</b>     |
|---|-----------------|
| Nature of claims and any affirmative defenses:        |                 |
| a. Was Rule 26(f)(1) Conference held?                 | <u>04/30/10</u> |
| b. Has Attorney Planning Meeting Form been submitted? | <u>04/30/10</u> |
| c. Was 26(a)(1) initial disclosure completed?         | <u>06/08/10</u> |
- 
- | <b>2. DISCOVERY LIMITATIONS</b>                    | <b>NUMBER</b> |
|--|---------------|
| a. Maximum Number of Depositions by Plaintiff      | <u>7</u>      |
| b. Maximum Number of Depositions by all Defendants | <u>7</u>      |

	c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	<u>8</u>
	d.	Maximum Interrogatories by any Party to any Party	<u>33</u>
	e.	Maximum requests for admissions by any Party to any Party	<u>33</u>
	f.	Maximum requests for production by any Party to any Party	<u>33</u>
3.		<b>AMENDMENT OF PLEADINGS/ADDING PARTIES</b>	<b>DATE</b>
	a.	Last Day to File Motion to Amend Pleadings	<u>07/31/10</u>
	b.	Last Day to File Motion to Add Parties	<u>07/31/10</u>
4.		<b>RULE 26(a)(2) REPORTS FROM EXPERTS</b>	<b>DATE</b>
	a.	Plaintiff	<u>12/31/10</u>
	b.	Defendants	<u>12/31/10</u>
	c.	Counter reports	<u>none</u>
5.		<b>OTHER DEADLINES</b>	<b>DATE</b>
	a.	Discovery to be completed by:	
		Fact discovery	<u>11/30/10</u>
		Expert discovery	<u>01/31/11</u>
	b.	(optional) Final date for supplementation of disclosures and discovery under Rule 26 (e)	<u>per Rules</u>
	c.	Deadline for filing dispositive or potentially dispositive motions	<u>02/11/11</u>

- | 6. | SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION | DATE            |
|----|---|-----------------|
| a. | Referral to Court-Annexed Mediation:      | <u>No</u>       |
| b. | Referral to Court-Annexed Arbitration     | <u>No</u>       |
| c. | Evaluate case for Settlement/ADR on       | <u>11/30/10</u> |
| d. | Settlement probability:                   | <u>fair</u>     |

***Four (4) days Jury trial.  
Shaded areas will be completed by the court.***

- | 7.  | TRIAL AND PREPARATION FOR TRIAL   | TIME             | DATE                              |
|-----|---|------------------|-----------------------------------|
| a.  | Rule 26(a)(3) Pretrial Disclosures  |                  |                                   |
|     | Plaintiff   |                  | <u>00/00/00</u>                   |
|     | Defendants  |                  | <u>00/00/00</u>                   |
| b.  | Objections to Rule 26(a)(3) Disclosures<br>(if different than 14 days provided in Rule) |                  | <u>00/00/00</u>                   |
| c.  | Special Attorney Conference on or before  |                  | <u>00/00/00</u>                   |
| d.  | Settlement Conference on or before  |                  | <u>00/00/00</u>                   |
| e.  | Final Pretrial Conference   | <u>2:30p.m.</u>  | <u>3/1/11</u><br><u>00/00/00</u>  |
| f.  | Trial   | <u>Length</u>    |                                   |
|     |   | <u># days</u>    |                                   |
| i.  | Bench Trial   | <u>_____ .m.</u> | <u>00/00/00</u>                   |
| ii. | Jury Trial  | <u>8:30a.m.</u>  | <u>3/15/11</u><br><u>00/00/00</u> |

*4 day jury trial*

**8. OTHER MATTERS**

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

2:09 CV 1112 DS  
Scheduling Order

Dated this 18<sup>th</sup> day of May, 2010.

BY THE COURT:

David Sam  
DAVID SAM  
UNITED STATES DISTRICT JUDGE

<sup>1</sup> Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

<sup>2</sup> A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

MAY 18 2010  
BY D. MARK JONES, CLERK  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, NORTHERN DIVISION

AMERICAN TRAILS COMPANY, a Joint Venture; AMERICAN TRAILS VENTURES GROUP, LLC, a Limited Liability Company; and DARWIN KADE CLINGER,

## Plaintiffs

**VS.**

JEFFERY S. SIMS; ACO ENTERPRISES, INC., a Corporation; AMERICAN TRAIL VENTURES, INC., a Corporation; and ROBERT J. SIMS,

## Defendants

**ORDER ON STIPULATED  
MOTION TO COMBINE  
CONSOLIDATED COMPLAINTS  
AND PENDING MOTIONS**

Case No. 2:09-cv-1113

**Judge: Dee Benson**

Pursuant to the stipulation of the parties, and for good cause appearing, it is hereby

ORDERED that:

1. On or before May 24, 2010, Plaintiffs shall file a single Amended Complaint which combines the factual allegations and claims against all defendants in this matter.


2. On or before June 1, 2010, Plaintiffs shall either withdraw or combine the pending motions relating to: (a) a temporary restraining order; (b) a preliminary injunction; (c) appointing a receiver and for an accounting; and (d) to maintain the status quo, so as to include plaintiffs' claims against all defendants herein in single motions.

3. Defendants shall file appropriate responses to pleadings or motions set forth in Paragraphs 1 and 2 above.

4. Any action on pending pleading or motions shall be stayed until the combined pleadings and motions are filed in accordance with Paragraphs 1 and 2 above.

DATED this 18<sup>th</sup> day of May, 2010.

BY THE COURT:

  
\_\_\_\_\_  
United States District Judge



FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

MAY 18 2010  
BY D. MARK JONES, CLERK  
DEPUTY CLERK

YOUNG SANCHEZ,	)	
	)	Case No. 2:09CV 01116-DB
Plaintiff	)	
	)	
v.	)	
	)	ORDER
MICHAEL J. ASTRUE,	)	
Commissioner of Social Security,	)	
	)	Honorable Dee Benson
Defendant.	)	

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Anthony Navarro in the United States District Court, District of Utah in the subject case is GRANTED.

DATED this 18<sup>th</sup> day of May, 2010.



Honorable Dee Benson  
United States District Court

## UNITED STATES DISTRICT COURT

District of Utah

UNITED STATES OF AMERICA

v.

ELVIS JOSE DELCID

## JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX210CR000201-001-TS

USM Number: 16905-081

Spencer Rice

Defendant's Attorney

## THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 U.S.C. § 1326	Reentry of a Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/17/2010

Date of Imposition of Judgment

Signature of Judge

The Honorable Ted Stewart

Name of Judge

U. S. District Judge

Title of Judge

5/18/2010

Date

DEFENDANT: ELVIS JOSE DELCID  
CASE NUMBER: DUTX210CR000201-001-TS

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

30 months

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends incarceration in an Arizona facility.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ELVIS JOSE DELCID  
CASE NUMBER: DUTX210CR000201-001-TS

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: ELVIS JOSE DELCID  
CASE NUMBER: DUTX210CR000201-001-TS

### **ADDITIONAL SUPERVISED RELEASE TERMS**

The defendant shall not re-enter the United States illegally. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: ELVIS JOSE DELCID  
CASE NUMBER: DUTX210CR000201-001-TS

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

TOTALS	\$ 0.00	\$ 0.00
--------	---------	---------

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ELVIS JOSE DELCID  
CASE NUMBER: DUTX210CR000201-001-TS

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

MAY 17 2010

BY D. MARK JONES, CLERK  
~~DEPUTY CLERK~~

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

UNITED STATES OF AMERICA, )

Plaintiff(s), )

v. )

NATHAN DOUGLAS CRANNEY )

Defendant(s). )

Case No. 2:10-CR-00209

**CONSENT TO ENTRY OF PLEA  
OF GUILTY BEFORE THE  
MAGISTRATE JUDGE AND  
ORDER OF REFERENCE**


---


Pursuant to 28 U.S.C. § 636(b)(3), the defendant, NATHAN DOUGLAS CRANNEY, after consultation and agreement with counsel, consents to United States Magistrate Judge Robert T. Braithwaite accepting defendant's plea of guilty and to the Magistrate Judge conducting proceedings pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The defendant also acknowledges and understands that sentencing on his plea of guilty will be before the assigned District Judge after a pre-sentence investigation and report, and compliance with Fed.R.Crim.P. 32.

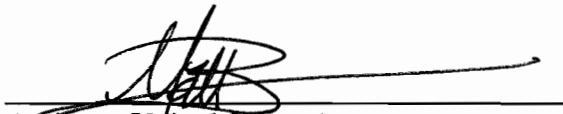
The United States, by and through the undersigned Assistant United States Attorney, consents to the Magistrate Judge conducting plea proceedings pursuant to Fed.R.Crim.P. 11, and accepting the defendant's plea of guilty as indicated above, pursuant to such proceedings.



DATED this 10 day of May, 2010.

  
Defendant

  
Attorney for Defendant

  
Assistant United States Attorney


### ORDER OF REFERENCE

Pursuant to 28 U.S.C. § 636(b)(3), and the consent of the parties above mentioned, including the defendant,

**IT IS HEREBY ORDERED** that United States Magistrate Judge Robert T. Braithwaite shall hear and conduct plea rendering under Fed.R.Crim.P. 11, and may accept the plea of guilty from the defendant pursuant thereto after full compliance with Fed.R.Crim.P. 11.

DATED this 10th day of May, 2010

BY THE COURT:

  
Ted Stewart  
United States District Judge

# UNITED STATES DISTRICT COURT

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

CENTRAL

DISTRICT OF

MAY 17 2010

UNITED STATES OF AMERICA

D. MARK JONES, CLERK  
ORDER OF PROBATION  
UNDER 18 U.S.C. § 3607

GREGORY E. BIRCHMEIER

CASE NUMBER: 2:10-CR-00220-RTB

The defendant having been found guilty of an offense described in 21 U.S.C. 841, by reason of a plea of guilty and it appearing that the defendant (1) has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to controlled substances, and (2) has not previously been the subject of a disposition under this subsection.

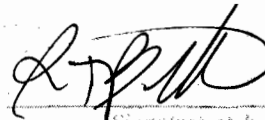
IT IS ORDERED that the defendant is placed on probation as provided in 18 U.S.C. § 3607 for a period of twelve (12) months without a judgment of conviction first being entered. The defendant shall comply with the conditions of probation set forth on both pages of this Order, and the following special conditions:

The defendant:

- 1) Shall pay a fine in the amount of \$1,000 and a \$25 special assessment fee;
- 2) Shall submit to drug/alcohol testing, as directed by the probation officer, and shall pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation office.

Date:

5-17-10



Signature of Judicial Officer

Robert T. Brathwaite, U.S. Magistrate

Name and Title of Judicial Officer

## CONSENT OF THE DEFENDANT

I have read the proposed Order of Probation Under 18 U.S.C. § 3607 and the Conditions of Probation. I understand that if I violate any conditions of probation, the court may enter a judgment of conviction and proceed as provided by law. I consent to the entry of the Order.

I also understand that, if I have not violated any condition of my probation, the Court, without entering a judgment of conviction, (1) may dismiss the proceedings and discharge me from probation before the expiration of the term of probation, or (2) shall dismiss the proceedings and discharge me from probation at the expiration of the term of probation.

(Signature of Defendant)

21682 Brookmont #44

(Street Address)

Huntington Beach, CA 92646

(City, State, Zip)

714-580-5428

(Telephone Number of Defendant)

8-23-1979

(Date of Defendant)

(Signature of Defense Counsel)


5-8-10

(Date of Signing)

## CONDITIONS OF PROBATION

While the defendant is on probation, the defendant:

- 1) shall not commit another federal, state, tribal or local crime;
- 2) shall not leave the judicial district without the permission of the court or probation officer;
- 3) shall report to the probation officer as directed by the court and shall submit a truthful and complete written report within the first five days of each month;
- 4) shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) shall support his or her dependents and meet other family responsibilities;
- 6) shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 7) shall notify the probation officer within seventy-two hours of any change in residence or employment;
- 8) shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 9) shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 10) shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 11) shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 12) shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 13) shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without permission of the court;
- 14) as directed by the probation officer, shall notify third parties of risks that may be occasioned by defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notification and to confirm the defendant's compliance with such notification requirement;
- 15) shall not possess a firearm or destructive device;
- 16) shall submit to a search of his or her person, residence, office or vehicle under his/her control by a U.S. Probation Officer or any other authorized person under the immediate and personal supervision of the U.S. Probation Officer, without a search warrant, to ensure compliance with all conditions of release, at a reasonable time and manner based on a reasonable suspicion of contraband or evidence of a violation of a condition of probation. Defendant shall warn any other residents that the premise may be searched pursuant to this condition;
- 17) the Court will defer to the decision of the U.S. Probation Office, Central Division of California, if the Office chooses to allow the Defendant to exercise his state-granted right to use marijuana for medicinal purposes pursuant to his medical marijuana license (see attached). If the Office does not permit such use, Defendant promises to refrain from using medicinal marijuana during the pendency of his probation.

  
Signature of Defendant  
Greg Birchmeier

5-8-10  
Date

Abe Bates  
Signature of Attorney  
Abraham Bates

5-10-10  
Date

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

MAY 17 2010

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

By D. MARK JONES, CLERK  
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff(s),

v.

~~MONTE LAWRENCE WAKE~~

RTB Danny Kay Wake  
DKW Defendant(s).

Case No. 2:10-CR-00230

**CONSENT TO ENTRY OF PLEA  
OF GUILTY BEFORE THE  
MAGISTRATE JUDGE AND  
ORDER OF REFERENCE**

PDS  
TB

Pursuant to 28 U.S.C. § 636(b)(3), the defendant, MONTE LAWRENCE WAKE, after consultation and agreement with counsel, consents to United States Magistrate Judge Robert T. Braithwaite accepting defendant's plea of guilty and to the Magistrate Judge conducting proceedings pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The defendant also acknowledges and understands that sentencing on his plea of guilty will be before the assigned District Judge after a pre-sentence investigation and report, and compliance with Fed.R.Crim.P. 32.

The United States, by and through the undersigned Assistant United States Attorney, consents to the Magistrate Judge conducting plea proceedings pursuant to Fed.R.Crim.P. 11, and accepting the defendant's plea of guilty as indicated above, pursuant to such proceedings.

DATED this 17 day of May, 2010.

Danny F. Wake  
Defendant

Ryan D. Gant  
Attorney for Defendant

[Signature]  
Assistant United States Attorney

**ORDER OF REFERENCE**

Pursuant to 28 U.S.C. § 636(b)(3), and the consent of the parties above mentioned, including the defendant,

**IT IS HEREBY ORDERED** that United States Magistrate Judge Robert T. Braithwaite shall hear and conduct plea rendering under Fed.R.Crim.P. 11, and may accept the plea of guilty from the defendant pursuant thereto after full compliance with Fed.R.Crim.P. 11.

DATED this 10th day of May, 2010

BY THE COURT:

[Signature]  
Ted Stewart  
United States District Judge

**SO ORDERED**

JEREMY M. DELICINO - 9959  
 Attorney at Law  
 10 West Broadway, Suite 650  
 Salt Lake City, Utah 84101  
 Telephone: (801) 364-6474  
 Facsimile: (801) 364-5014

FILED IN UNITED STATES DISTRICT  
 COURT, DISTRICT OF UTAH

*Dee Benson*

DEE BENSON  
 United States District Judge

MAY 18 2010

BY D. MARK JONES, CLERK

DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
 DISTRICT OF UTAH CENTRAL DIVISION

Date May 18, 2010

UNITED STATES OF AMERICA,

Plaintiff,

v.

GRACE HELEN DAVIE,

Defendant.

:

:

MOTION TO WITHDRAW  
 NOTICE OF APPEAL

:

:

Case No. 2:10-CR-00252 DB

:

The defendant, through her attorney of record, Jeremy M. Delicino, hereby moves to withdraw the notice of appeal previously filed in this case. While counsel would typically file such a motion with the Tenth Circuit Court of Appeals, counsel is moving this court to withdraw the notice of appeal because the appeal has not yet been docketed in the appellate court. As such, counsel believes that this court has the authority to simply withdraw the notice of appeal on the defendant's custody status previously filed in this court.

DATED this 13<sup>th</sup> day of May, 2010.

/s/Jeremy M. Delicino

JEREMY M. DELICINO  
 Attorney for Defendant

---

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH,

CENTRAL DIVISION

May 18, 2010 (1:26pm)

DISTRICT OF UTAH

---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAVIER PEDRAZA-REYNA

Defendant.

: Case No. 2:10-CR-375 CW  
: ORDER SETTING DISPOSITION  
: DATE AND EXCLUDING TIME  
: FROM SPEEDY TRIAL  
: COMPUTATION

---

This matter came before this Court on 5/19/10 for the purpose of an initial appearance and arraignment. The defendant, who was present, was represented by Rob Hunt. The United States was represented by Assistant United States Attorney Lynda Krause. This defendant has been charged with Illegal Reentry of a Previously Removed Alien in violation of 8 U.S.C. § 1326.

The United States Attorney's Office for the District of Utah has indicated that this defendant meets the eligibility requirements for the "fast-track" benefit, namely, an additional reduction in his or her sentence. However, in order to derive the benefit of this reduction, the defendant must agree to certain conditions as set forth in the fast-track program.



This defendant did not, and is not required at this hearing, to enter a plea of guilty, nor is he/she required at this hearing to commit to enter a plea of guilty. However, the defendant, through counsel, has indicated that he/she wishes to preserve his/her opportunity to participate in the program, and has consented, in writing, to the initiation and disclosure to the Court and the parties of a pre-plea disposition report.

The defendant has requested that this Court set this matter for a status/change of plea hearing date approximately 55 days from the date of this initial appearance and arraignment. Counsel for the defendant has indicated that such will afford counsel the time necessary to meaningfully explain to the defendant the details of the fast-track program and its potential application to this case. Additionally, this time will provide the defendant an adequate opportunity to make an informed decision whether to participate in the program. Therefore, based upon the reasons set forth above, this Court ORDERS that this matter be scheduled for **7/20/10 at 2:30 pm** before **Judge Waddoups**.

This Court finds, pursuant to 18 U.S.C. § 3161(h)(1)(I), that this period of delay is a result of the necessary consideration by the Court and parties of this proposed plea agreement. Additionally, this Court finds, pursuant to 18 U.S.C. § 3161(h)(8)(A), that the ends of justice outweigh the best interest of the public and defendant in a speedy trial and that, pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv), that the failure to grant such a continuance would deny counsel

for the defendant and the defendant the reasonable time necessary for effective preparation and for discussion and deliberation of the proposed plea agreement, taking into account the exercise of due diligence, and would therefore result in a miscarriage of justice. Based on the foregoing, IT IS HEREBY ORDERED that, pursuant to 18 U.S.C. § 3161(h), all time between **5/19/10** (the date of this appearance), and **7/20/10** (the date of the scheduled status hearing) is excluded from computing the time within which the trial of this matter must commence.

DATED this 19th day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Samuel Alba', written over a horizontal line.

Samuel Alba  
United States Magistrate Judge

---

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION  
May 18, 2010 (1:26pm)  
DISTRICT OF UTAH

---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MIGUEL ANTONIO SIERRA

Defendant.

: Case No. 2:10-CR-378 CW  
: ORDER SETTING DISPOSITION  
: DATE AND EXCLUDING TIME  
: FROM SPEEDY TRIAL  
: COMPUTATION  
:

---

This matter came before this Court on 5/19/10 for the purpose of an initial appearance and arraignment. The defendant, who was present, was represented by Rob Hunt. The United States was represented by Assistant United States Attorney Lynda Krause. This defendant has been charged with Illegal Reentry of a Previously Removed Alien in violation of 8 U.S.C. § 1326.

The United States Attorney's Office for the District of Utah has indicated that this defendant meets the eligibility requirements for the "fast-track" benefit, namely, an additional reduction in his or her sentence. However, in order to derive the benefit of this reduction, the defendant must agree to certain conditions as set forth in the fast-track program.

This defendant did not, and is not required at this hearing, to enter a plea of guilty, nor is he/she required at this hearing to commit to enter a plea of guilty. However, the defendant, through counsel, has indicated that he/she wishes to preserve his/her opportunity to participate in the program, and has consented, in writing, to the initiation and disclosure to the Court and the parties of a pre-plea disposition report.

The defendant has requested that this Court set this matter for a status/change of plea hearing date approximately 55 days from the date of this initial appearance and arraignment. Counsel for the defendant has indicated that such will afford counsel the time necessary to meaningfully explain to the defendant the details of the fast-track program and its potential application to this case. Additionally, this time will provide the defendant an adequate opportunity to make an informed decision whether to participate in the program. Therefore, based upon the reasons set forth above, this Court ORDERS that this matter be scheduled for **7/19/10 at 2:30 pm** before **Judge Waddoups**.

This Court finds, pursuant to 18 U.S.C. § 3161(h)(1)(I), that this period of delay is a result of the necessary consideration by the Court and parties of this proposed plea agreement. Additionally, this Court finds, pursuant to 18 U.S.C. § 3161(h)(8)(A), that the ends of justice outweigh the best interest of the public and defendant in a speedy trial and that, pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv), that the failure to grant such a continuance would deny counsel

for the defendant and the defendant the reasonable time necessary for effective preparation and for discussion and deliberation of the proposed plea agreement, taking into account the exercise of due diligence, and would therefore result in a miscarriage of justice. Based on the foregoing, IT IS HEREBY ORDERED that, pursuant to 18 U.S.C. § 3161(h), all time between **5/19/10** (the date of this appearance), and **7/19/10** (the date of the scheduled status hearing) is excluded from computing the time within which the trial of this matter must commence.

DATED this 19th day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Samuel Alba', written over a horizontal line.

Samuel Alba  
United States Magistrate Judge

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUSTVO SAUCEDO-LOPEZ,

Defendant.

**FILED**

CLERK, U.S. DISTRICT COURT

May 18, 2010 (2:24pm)

DISTRICT OF UTAH

~~Case No. 2:10 CR 379 DB~~

ORDER SETTING DISPOSITION  
DATE AND EXCLUDING TIME  
FROM SPEEDY TRIAL  
COMPUTATION

---

This matter came before this Court on 5/19/10 for the purpose of an initial appearance and arraignment. The defendant, who was present, was represented by Spencer Rice . The United States was represented by Assistant United States Attorney Lynda Krause. This defendant has been charged with Illegal Reentry of a Previously Removed Alien in violation of 8 U.S.C. § 1326.

The United States Attorney's Office for the District of Utah has indicated that this defendant meets the eligibility requirements for the "fast-track" benefit, namely, an additional reduction in his or her sentence. However, in order to derive the benefit of this reduction, the defendant must agree to certain conditions as set forth in the fast-track program.

This defendant did not, and is not required at this hearing, to enter a plea of guilty, nor is he/she required at this hearing to commit to enter a plea of guilty. However, the defendant, through counsel, has indicated that he/she wishes to preserve his/her opportunity to participate in the program, and has consented, in writing, to the initiation and disclosure to the Court and the parties of a pre-plea disposition report.

The defendant has requested that this Court set this matter for a status/change of plea hearing date approximately 55 days from the date of this initial appearance and arraignment. Counsel for the defendant has indicated that such will afford counsel the time necessary to meaningfully explain to the defendant the details of the fast-track program and its potential application to this case. Additionally, this time will provide the defendant an adequate opportunity to make an informed decision whether to participate in the program. Therefore, based upon the reasons set forth above, this Court ORDERS that this matter be scheduled for **7/21/10 at 1:30 pm** before **Judge Benson**.

This Court finds, pursuant to 18 U.S.C. § 3161(h)(1)(I), that this period of delay is a result of the necessary consideration by the Court and parties of this proposed plea agreement. Additionally, this Court finds, pursuant to 18 U.S.C. § 3161(h)(8)(A), that the ends of justice outweigh the best interest of the public and defendant in a speedy trial and that, pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv), that the failure to grant such a continuance would deny counsel

for the defendant and the defendant the reasonable time necessary for effective preparation and for discussion and deliberation of the proposed plea agreement, taking into account the exercise of due diligence, and would therefore result in a miscarriage of justice. Based on the foregoing, IT IS HEREBY ORDERED that, pursuant to 18 U.S.C. § 3161(h), all time between **5/19/10** (the date of this appearance), and **7/21/10** (the date of the scheduled status hearing) is excluded from computing the time within which the trial of this matter must commence.

DATED this 19th day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Samuel Alba', is written over a horizontal line.

Samuel Alba  
United States Magistrate Judge



---

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DISTRICT COURT  
May 18, 2010 (1:26pm)  
DISTRICT OF UTAH

FILED

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARTIN VARELA DAVALOS

Defendant.

: Case No. 2:10-CR-380 TC  
: ORDER SETTING DISPOSITION  
: DATE AND EXCLUDING TIME  
: FROM SPEEDY TRIAL  
: COMPUTATION  
:

---

This matter came before this Court on 5/19/10 for the purpose of an initial appearance and arraignment. The defendant, who was present, was represented by Spencer Rice . The United States was represented by Assistant United States Attorney Lynda Krause. This defendant has been charged with Illegal Reentry of a Previously Removed Alien in violation of 8 U.S.C. § 1326.

The United States Attorney's Office for the District of Utah has indicated that this defendant meets the eligibility requirements for the "fast-track" benefit, namely, an additional reduction in his or her sentence. However, in order to derive the benefit of this reduction, the defendant must agree to certain conditions as set forth in the fast-track program.

This defendant did not, and is not required at this hearing, to enter a plea of guilty, nor is he/she required at this hearing to commit to enter a plea of guilty. However, the defendant, through counsel, has indicated that he/she wishes to preserve his/her opportunity to participate in the program, and has consented, in writing, to the initiation and disclosure to the Court and the parties of a pre-plea disposition report.

The defendant has requested that this Court set this matter for a status/change of plea hearing date approximately 55 days from the date of this initial appearance and arraignment. Counsel for the defendant has indicated that such will afford counsel the time necessary to meaningfully explain to the defendant the details of the fast-track program and its potential application to this case. Additionally, this time will provide the defendant an adequate opportunity to make an informed decision whether to participate in the program. Therefore, based upon the reasons set forth above, this Court ORDERS that this matter be scheduled for **7/14/10 at 3:00 pm** before **Judge Campbell**.

This Court finds, pursuant to 18 U.S.C. § 3161(h)(1)(I), that this period of delay is a result of the necessary consideration by the Court and parties of this proposed plea agreement. Additionally, this Court finds, pursuant to 18 U.S.C. § 3161(h)(8)(A), that the ends of justice outweigh the best interest of the public and defendant in a speedy trial and that, pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv), that the failure to grant such a continuance would deny counsel

for the defendant and the defendant the reasonable time necessary for effective preparation and for discussion and deliberation of the proposed plea agreement, taking into account the exercise of due diligence, and would therefore result in a miscarriage of justice. Based on the foregoing, IT IS HEREBY ORDERED that, pursuant to 18 U.S.C. § 3161(h), all time between **5/19/10** (the date of this appearance), and **7/14/10** (the date of the scheduled status hearing) is excluded from computing the time within which the trial of this matter must commence.

DATED this 19th day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Samuel Alba', written over a horizontal line.

Samuel Alba  
United States Magistrate Judge

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE OCAMPO-ANTE,

Defendant.

**FILED**

CLERK, U.S. DISTRICT COURT

May 18, 2010 (2:17pm)

DISTRICT OF UTAH

Case No. 2:10-CR-381-DB

ORDER SETTING DISPOSITION

DATE AND EXCLUDING TIME

FROM SPEEDY TRIAL

COMPUTATION

---

This matter came before this Court on 5/19/10 for the purpose of an initial appearance and arraignment. The defendant, who was present, was represented by Spencer Rice . The United States was represented by Assistant United States Attorney Lynda Krause. This defendant has been charged with Illegal Reentry of a Previously Removed Alien in violation of 8 U.S.C. § 1326.

The United States Attorney's Office for the District of Utah has indicated that this defendant meets the eligibility requirements for the "fast-track" benefit, namely, an additional reduction in his or her sentence. However, in order to derive the benefit of this reduction, the defendant must agree to certain conditions as set forth in the fast-track program.

This defendant did not, and is not required at this hearing, to enter a plea of guilty, nor is he/she required at this hearing to commit to enter a plea of guilty. However, the defendant, through counsel, has indicated that he/she wishes to preserve his/her opportunity to participate in the program, and has consented, in writing, to the initiation and disclosure to the Court and the parties of a pre-plea disposition report.


The defendant has requested that this Court set this matter for a status/change of plea hearing date approximately 55 days from the date of this initial appearance and arraignment. Counsel for the defendant has indicated that such will afford counsel the time necessary to meaningfully explain to the defendant the details of the fast-track program and its potential application to this case. Additionally, this time will provide the defendant an adequate opportunity to make an informed decision whether to participate in the program. Therefore, based upon the reasons set forth above, this Court ORDERS that this matter be scheduled for **7/21/10 at 1:00 pm** before **Judge Benson**.

This Court finds, pursuant to 18 U.S.C. § 3161(h)(1)(I), that this period of delay is a result of the necessary consideration by the Court and parties of this proposed plea agreement. Additionally, this Court finds, pursuant to 18 U.S.C. § 3161(h)(8)(A), that the ends of justice outweigh the best interest of the public and defendant in a speedy trial and that, pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv), that the failure to grant such a continuance would deny counsel

for the defendant and the defendant the reasonable time necessary for effective preparation and for discussion and deliberation of the proposed plea agreement, taking into account the exercise of due diligence, and would therefore result in a miscarriage of justice. Based on the foregoing, IT IS HEREBY ORDERED that, pursuant to 18 U.S.C. § 3161(h), all time between **5/19/10** (the date of this appearance), and **7/21/10** (the date of the scheduled status hearing) is excluded from computing the time within which the trial of this matter must commence.

DATED this 19th day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Samuel Alba', is written over a horizontal line.

Samuel Alba  
United States Magistrate Judge

---

IN THE UNITED STATES DISTRICT COURT DISTRICT OF UTAH, CENTRAL DIVISION May 18, 2010 (1:26pm) DISTRICT OF UTAH	<b>FILED</b>
--	--------------

---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VICTOR MANUEL AGUILAR-  
SERVELLON

Defendant.

: Case No.2:10-CR-382 TS  
: ORDER SETTING DISPOSITION  
: DATE AND EXCLUDING TIME  
: FROM SPEEDY TRIAL  
: COMPUTATION  
:

---

This matter came before this Court on 5/19/10 for the purpose of an initial appearance and arraignment. The defendant, who was present, was represented by Spencer Rice . The United States was represented by Assistant United States Attorney Lynda Krause. This defendant has been charged with Illegal Reentry of a Previously Removed Alien in violation of 8 U.S.C. § 1326.

The United States Attorney's Office for the District of Utah has indicated that this defendant meets the eligibility requirements for the "fast-track" benefit, namely, an additional reduction in his or her sentence. However, in order to derive the benefit of this reduction, the defendant must agree to certain conditions as set forth in the fast-track program.

This defendant did not, and is not required at this hearing, to enter a plea of guilty, nor is he/she required at this hearing to commit to enter a plea of guilty. However, the defendant, through counsel, has indicated that he/she wishes to preserve his/her opportunity to participate in the program, and has consented, in writing, to the initiation and disclosure to the Court and the parties of a pre-plea disposition report.

The defendant has requested that this Court set this matter for a status/change of plea hearing date approximately 55 days from the date of this initial appearance and arraignment. Counsel for the defendant has indicated that such will afford counsel the time necessary to meaningfully explain to the defendant the details of the fast-track program and its potential application to this case. Additionally, this time will provide the defendant an adequate opportunity to make an informed decision whether to participate in the program. Therefore, based upon the reasons set forth above, this Court ORDERS that this matter be scheduled for **7/15/10 at 3:00 pm** before **Judge Stewart**.

This Court finds, pursuant to 18 U.S.C. § 3161(h)(1)(I), that this period of delay is a result of the necessary consideration by the Court and parties of this proposed plea agreement. Additionally, this Court finds, pursuant to 18 U.S.C. § 3161(h)(8)(A), that the ends of justice outweigh the best interest of the public and defendant in a speedy trial and that, pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv), that the failure to grant such a continuance would deny counsel



for the defendant and the defendant the reasonable time necessary for effective preparation and for discussion and deliberation of the proposed plea agreement, taking into account the exercise of due diligence, and would therefore result in a miscarriage of justice. Based on the foregoing, IT IS HEREBY ORDERED that, pursuant to 18 U.S.C. § 3161(h), all time between **5/19/10** (the date of this appearance), and **7/15/10** (the date of the scheduled status hearing) is excluded from computing the time within which the trial of this matter must commence.

DATED this 19th day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Samuel Alba', is written above a horizontal line.

Samuel Alba  
United States Magistrate Judge

# United States District Court

CENTRAL DISTRICT OF UTAH

MAY 18 2010

FILED IN UNITED STATES DISTRICT COURT OF UTAH  
BY D. MARK JONES, CLERK  
DEPUTY CLERK

UNITED STATES OF AMERICA

V.

## ORDER SETTING CONDITIONS OF RELEASE

**JIMMY DEAN WEST****Case Number: 2:10-CR-384 TC**

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

as directed. The defendant shall next appear at (if blank, to be notified)

United State District Court

PLACE

350 South Main

on

As Directed

DATE AND TIME

### Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- ( ) (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

dollars (\$ )

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

### Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- ( ) (6) The defendant is placed in the custody of:  
(Name of person or organization)  
(Address)  
(City and state) - (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: \_\_\_\_\_  
Custodian or Proxy

(✓)(7) The defendant shall:

- ( ) (a) maintain or actively seek employment.
- ( ) (b) maintain or commence an educational program.
- (✓)(c) abide by the following restrictions on his personal associations, place of abode, or travel:  
**Maintain residence and do not move without prior permission from Pretrial Services.**  
**No travel outside the state of Utah without prior permission of Pretrial Services.**
- ( ) (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:
- (✓)(e) report on a regular basis to the supervising officer as directed.
- ( ) (f) comply with the following curfew:
- (✓)(g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
- ( ) (h) refrain from excessive use of alcohol.
- (✓)(i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
- (✓)(j) undergo a mental health evaluation and participate in recommended treatment, including taking prescribed medication, as deemed appropriate by Pretrial Services
- ( ) (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
- ( ) (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
- ( ) (m) execute a bail bond with solvent sureties in the amount of \$
- ( ) (n) return to custody each (week)day as of \_\_\_\_\_ o'clock after being released each (week)day as of \_\_\_\_\_ o'clock for employment, schooling or the following limited purpose(s):
- ( ) (o) surrender any passport to
- (✓)(p) obtain no passport
- (✓)(q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.  
**Court to be notified of any positive drug testing.**
- ( ) (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
- ( ) (s) submit to an electronic monitoring program as directed by the supervising officer.
- (✓)(t) **Do not have any unsupervised contact with any persons under the age of 18; any supervised contact to be pre-approved by Pretrial Services. Do not access or possess any type of pornography. Do not use or possess or have to any computer or internet capable devices. Any computer in the home is subject to monitoring by Pretrial Services.**

**Advice of Penalties and Sanctions**

TO THE DEFENDANT:

~~YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:~~

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. ~~The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.~~

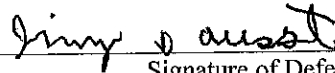
If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

**Acknowledgment of Defendant**

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.



Signature of Defendant

**Directions to the United States Marshal**

- (X) The defendant is ORDERED released after processing.  
 ( ) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: 5/18/10


Signature of Judicial Officer

**Magistrate Judge Samuel Alba**

Name and Title of Judicial Officer

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT

2010 MAY 18 A 9:24

In re

BRIAN A. KITTS,

Debtor.

J. KEVIN BIRD,

Appellant/Cross Appellee,

v.

WINTERFOX, LLC

Appellee/Cross Appellant.

ORDER:

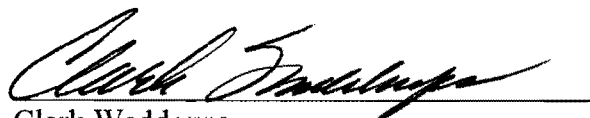
Case No. 2:10-cv-111 CW

Judge Clark Waddoups

This matter is before the court on Appellant/Cross Appellee J. Kevin Bird's Motion to Expedite Hearing on Appeal and Cross-Appeal. Having considered the motion, the court DENIES the motion.<sup>1</sup>

DATED this 17<sup>th</sup> day of May, 2010.

BY THE COURT:



Clark Waddoups  
United States District Judge

<sup>1</sup> Docket No. 31.

JOHN PAUL SOLTIS (3040)  
REBECCA S. PARR (6628)  
Assistant Utah Attorney General  
MARK L. SHURTLEFF (4666)  
Utah Attorney General  
Attorneys for Defendants  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
Telephone: (801) 366-0100  
Facsimile: (801) 366-0101  
e-mail [jsoltis@utah.gov](mailto:jsoltis@utah.gov)  
[rparr@utah.gov](mailto:rparr@utah.gov)

FILED  
U.S. DISTRICT COURT

2010 MAY 18 A 9:24

DISTRICT OF UTAH

BY: DEPUTY CLERK

---

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF UTAH CENTRAL DIVISION

---

MICHAEL W. YODER,

Plaintiff,

v.

PAUL KIRKPATRICK, et al.,

Defendants.

**ORDER TO SEAL FORMER  
EMPLOYEE PERSONAL  
INFORMATION**

Case No. 2:10cv00257

Judge Clark Waddoups

---

Pursuant to DUCiv.R. 5-2(c) and DUCiv.R 79-1(b), and based on the Motion to Seal  
Former Employee Personal Information, the information will be sealed.

DATED this 17<sup>th</sup> day of May, 2010.

BY THE COURT:



Judge Clark Waddoups  
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

---

MICHAEL W. YODER,	)	<b>O R D E R</b>
	)	
Plaintiff,	)	Case No. 2:10-CV-257 CW
	)	
v.	)	District Judge Clark Waddoups
	)	
PAUL KIRKPATRICK et al.,	)	
	)	
Defendants.	)	

---

Plaintiff/inmate, Michael W. Yoder, filed a *pro se* civil rights complaint, see 42 U.S.C.S. § 1983 (2010), proceeding *in forma pauperis*, see 28 *id.* 1915. On April 23, 2010, the Court carefully screened his complaint, ordering some defendants to be dismissed from the case and the remaining defendants to be served. After the complaint had been served upon Defendants, Plaintiff filed a motion for the Court to reconsider the order. In it, he requests permission to file an amended complaint to clarify issues in his original complaint that resulted in dismissal of certain defendants and, what Plaintiff asserts as, mischaracterization of his claims.

**IT IS HEREBY ORDERED** that:

(1) Plaintiff's motion is **GRANTED**. (See Docket Entry # 18.)  
Plaintiff has thirty days in which to file an amended complaint.

(2) Defendants shall not file answers until further notice.  
Consequently, Defendants' motion for a time extension in which to answer the complaint is **DENIED** as moot. (See Docket Entry # 23.)

(3) Defendants' motion to seal former employee information is **GRANTED**. (See Docket Entry # 24.)

DATED this 17<sup>th</sup> day of May, 2010.

BY THE COURT:



---

JUDGE CLARK WADDOUPS  
United States District Court



WOOD CRAPO LLC  
Mary Anne Q. Wood #3539  
Stephen Q. Wood #12403  
60 E. South Temple, Suite 500  
Salt Lake City, Utah 84111  
Telephone: (801) 366-6060

*Attorneys for Defendant*

FILED  
U.S. DISTRICT COURT

2010 MAY 18 A 9:24

DISTRICT CLERK

BY: \_\_\_\_\_  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

---

MONAVIE LLC, a Delaware limited liability company,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 2:10CV00264
	)	
ZRII, LLC, a Utah limited liability company,	)	Judge Clark Waddoups
	)	
Defendant.	)	
	)	

---


Defendant Zrii, LLC has moved ex parte, under DUCivR 77-2 for an Order extending once, for fourteen days, the time to answer or otherwise plead to Plaintiff's Complaint.

On April 22, 2010, Plaintiff served Defendant. Under Fed.R.Civ.P. 12(a)(2), an answer is due on May 13, 2010. Defendant has not previously sought an extension of time to answer the Complaint.

IT IS HEREBY ORDERED that the date for Defendant to answer or otherwise plead to Plaintiff's Complaint is extended to May 27, 2010.

DATED this 17<sup>th</sup> day of May, 2010.

BY THE COURT:

  
Clerk of the Court

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 13, 2010, I electronically filed the foregoing  
***ORDER EXTENDING TIME TO ANSWER OR OTHERWISE PLEAD*** with the Clerk of  
Court using the CM/ECF system which sent notification of such filing to the following:

Graden P. Jackson  
Jacob C. Briem  
R. Roman Groesbeck  
Strong & Hanni  
3 Triad Center, Suite 500  
Salt Lake City, UT 84180

DATED this 13<sup>th</sup> day of March, 2010.

s/Mary Anne Q. Wood\_\_\_\_\_

Michael Patrick O'Brien (USB #4894)  
**JONES, WALDO, HOLBROOK & McDONOUGH**  
170 South Main Street, Suite 1500  
Post Office Box 45444  
Salt Lake City, Utah 84145-0444  
Telephone: (801) 521-3200  
[mobrien@joneswaldo.com](mailto:mobrien@joneswaldo.com)

FILED  
U.S. DISTRICT COURT  
2010 MAY 18 P 2:13  
DIST. CLERK  
BY: DEPUTY CLERK

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

K-LOUISE B. SMITH,	::	<b>[PROPOSED] ORDER</b>
	::	
Plaintiff,	::	
	::	
vs.	::	Case No. 2:10-cv-00347-CW
	::	
SYMBIOT BUSINESS GROUP,	::	Judge Clark Waddoups
	::	
Defendant.	::	
	::	
	::	
	::	

---

Plaintiff and Defendant having stipulated to the same and good cause being shown, IT  
IS HEREBY ORDERED that Defendant may have an extension of time until May 31, 2010 to  
respond to Plaintiff's Complaint in the above-captioned matter.

DATED this 18th day of May, 2010.

BY THE COURT



Clark Waddoups  
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 18<sup>th</sup> day of May, 2010, I caused to be delivered, via the court's electronic filing system, email or otherwise by first class mail postage prepaid if needed, a true and correct copy of the foregoing **PROPOSED ORDER**, to the following:

Gregory W. Stevens  
Attorney for Plaintiff K-Louise B. Smith  
Cottonwood Corporate Center  
2825 East Cottonwood Parkway  
Suite 500  
Salt Lake City, UT 84121-7060

/s/ Michael Patrick O'Brien

Michael Patrick O'Brien  
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

ANTHONY JOE CHAVEZ,

Plaintiff,

v.

TODD RASMUSSEN et al.,

Defendants.

2013 MAY 18 P 3:09

**ORDER**

Case No. 2:10-CV-349 DS

District Judge David Sam

Plaintiff, Anthony Joe Chavez, filed a *pro se* prisoner civil rights complaint.<sup>1</sup> The Court has already granted Plaintiff's request to proceed without prepaying the entire filing fee.

Even so, Plaintiff must eventually pay the full \$350.00 filing fee required.<sup>2</sup> Plaintiff must start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his inmate] account . . . or . . . the average monthly balance in [his inmate] account for the 6-month period immediately preceding the filing of the complaint."<sup>3</sup> Under this formula, Plaintiff must pay \$0.47. If this initial partial fee is not paid within thirty days, or if Plaintiff has not shown he has no means to pay the initial partial filing fee, the complaint will be dismissed.

<sup>1</sup>See 42 U.S.C.S. § 1983 (2010).

<sup>2</sup>See 28 *id.* § 1915(b)(1).

<sup>3</sup>*Id.*

Plaintiff must also complete the attached "Consent to Collection of Fees" form and submit the original to the inmate funds accounting office and a copy to the Court within thirty days so the Court may collect the balance of the entire filing fee Plaintiff owes. Plaintiff is also notified that pursuant to Plaintiff's consent form submitted to this Court, Plaintiff's correctional facility will make monthly payments from Plaintiff's inmate account of twenty percent of the preceding month's income credited to Plaintiff's account.

IT IS THEREFORE ORDERED that:

(1) Although the Court has already granted Plaintiff's application to proceed *in forma pauperis*, Plaintiff must still eventually pay \$350.00, the full amount of the filing fee.

(2) Plaintiff must pay an initial partial filing fee of \$0.47 within thirty days of the date of this Order, or his complaint will be dismissed.

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.

(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office at Plaintiff's correctional facility.

(5) Plaintiff shall complete the consent to collection of fees and submit it to the inmate funds accounting office at

Plaintiff's correctional facility and also submit a copy of the signed consent to this Court within thirty days from the date of this Order, or the complaint will be dismissed.

DATED this 18<sup>th</sup> day of May, 2010.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "David Sam".

DAVID SAM  
United States District Judge



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Anthony Joe Chavez (Case No. 2:10-CV-349 DS), understand that even though the Court has granted my application to proceed *in forma pauperis* and filed my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I, Anthony Joe Chavez, hereby consent for the appropriate institutional officials to withhold from my inmate account and pay to the court an initial payment of \$0.47, which is 20% of the greater of:

- (a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or
- (b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

---

Signature of Inmate  
Anthony Joe Chavez

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

---

SCOTT A. CLARK,	)	<b>O R D E R</b>
	)	
Petitioner,	)	Case No. 2:10-CV-371 TS
	)	
v.	)	District Judge Ted Stewart
	)	
STEVEN TURLEY et al.,	)	
	)	
Respondents.	)	

---

Petitioner, Scott A. Clark, an inmate at Utah State Prison, filed a *habeas corpus* petition. See 28 U.S.C.S. § 2241 (2010).

IT IS HEREBY ORDERED that, by June 30, 2010, Respondents must answer the petition. The answer must address the petition's allegations and state whether any claim is barred by failure to exhaust state remedies, procedural bar, non-retroactivity, or the period of limitation.

IT IS FURTHER ORDERED that the Clerk of Court must serve upon Respondents copies of this Order and the petition. (See Docket Entry # 1); *cf.* R. 4, Rs. Governing § 2254 Cases in the U.S. Dist. Courts. ("In every case [in which a response is ordered], the clerk must serve a copy of the petition and any order on the respondent and on the attorney general or other appropriate officer of the state involved.").

DATED this 17th day of May, 2010.

BY THE COURT:

  
\_\_\_\_\_  
DISTRICT JUDGE TED STEWART  
United States District Court

United States District Court  
for the  
District of Utah  
May 18, 2010

\*\*\*\*\*MAILING CERTIFICATE OF THE CLERK\*\*\*\*\*

RE: Scott A. Clark v. Steven Turley et al.  
2:10-CV-371 TS

Scott A. Clark, #24002/77204  
Utah State Prison  
P.O. Box 250  
Draper, UT 84020-0250

Utah Attorney General  
Criminal Appeals  
160 East 300 South, Sixth Floor  
P.O. Box 140854  
Salt Lake City, UT 84114-0854

A handwritten signature in cursive script, reading "Melissa Saddler", is written over a horizontal line.

Melissa Saddler, Deputy Clerk